

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF &
APPENDIX**

76-6032

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

HERBERT LEO PALM,
PLAINTIFF-APPELLANT,
v.

THE VETERANS ADMINISTRATION OF
THE UNITED STATES OF AMERICA, AND
THE UNITED STATES OF AMERICA,
DEFENDANTS-APPELLEES

APPELLANT'S
BRIEF WITH
ADDENDUM,
APPENDIX
AND EXHIBITS

CIVIL APPEAL
DOCKET No. ROSE
76-6032



BRIEF
&
APPENDIX

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
HERBERT LEO PALM, :
Plaintiff-Appellant, : APPELLANT'S BRIEF
v. :
THE VETERANS ADMINISTRATION OF :
THE UNITED STATES OF AMERICA, and : CIVIL APPEAL
THE UNITED STATES OF AMERICA, :
Defendants-Appellees. :
-----X

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II. TABLE OF CASES, STATUTES AND OTHER AUTHORITIES
CITED

BRIEF PAGES:

III. STATEMENT OF ISSUES PRESENTED
FOR REVIEW

1. District Judge Charles M. Metzner held no hearings before he rendered the herein appealed decisions dated October 6, 1975 and January 27, 1977, nor was the required inquiry in depth made which was necessary in this case for the purpose of selecting the proper facts and grounds applicable to tolling the statute of limitations from the abundance of facts and grounds which said Judge knew were available in this case from Appellant's case 75 Civ 315 (CMM) which was pending before said Judge simultaneously.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process and equal protection of the laws).

2. Said Judge did not rule on Appellant's contention that the "continuous treatment rule" tolls the statute of limitations in this case.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process and equal protection of the laws).

3. Said Judge did not rule on Appellant's contention that his authoritative discovery of the negligent acts was made on September 24, 1974 only, and that the satute of limitations could at best start running from then on only.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process and equal protection of the laws).

4. Said Judge did not rule on Appellant's contention that ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ the fact the Appellee Veterans Administration determined from Appellant's medical

records that the Appellant was totally disabled since May 18, 1965 to the present and that filing of his Disability Insurance claim was impossible until October 13, 1974 due to circumstances beyond Appellant's control must also toll the statute of limitations pertaining to Appellant's administrative tort claim against Appellee Veterans Administration until August 2, 1974 at least, when it was actually filed.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process and equal protection of the laws).

5. The herein appealed two decisions are void under Common Law and under the United States Constitution because said Judge had prior knowledge of the fact that the Appellant by criminal, unlawful and unconstitutional means (continuous conspiracy to violate Appellant's civil rights, constitutional rights and human rights; continuous ^{severe} actual violations of Appellant's civil rights, constitutional rights and human rights, including infliction of great bodily harm; continuous duress and undue influence; continuous conspiracy to obstruct justice and the due administration of the laws; malfeasance of United States government officials with respect to Appellant's case; illegal refusal of consular protection, a statutory right~~s~~ of Appellant pursuant to 22 U.S.C. § 1731 and § 1732; criminal medical malpractice and nonpractice by United States government physicians and private physicians in the United States and Europe; illegal and criminal adulteration of the drinking water, food and medicines for the purpose of poisoning the Appellant on the part of New York State and New York City authorities and authorities of foreign countries and private persons, was prevented from filing his tort claim within the two years statute of limitations under the Federal Tort Claims Act, Title 28 United States Code § 2401 (b).

These unlawful actions toll the statute of limitations in this case pursuant to Common Law.

6. It was not the intent of Congress to deprive anyone prevented by criminal and unlawful means from timely filing of his rights under the Federal Tort Claims Act, and Common Law tolls the statute of limitations in such cases, and Appellant's case is of this nature, and said Judge had such evidence before him.

7. Common Law does not permit the Appellees to deprive anyone of his legal rights in general by unlawful means, as they have been doing all along and are still doing to this date with respect to the Appellant, and then be the beneficiary of such unlawful actions, because this is "contra bonos mores" and tolls the statute of limitations in such cases, and Appellant's case is of this nature, and said Judge had such evidence before him.

IV. STATEMENT OF THE CASE

A. Prior Proceedings

Appellant, a naturalized United States citizen and honorably discharged Veteran of the United States Army, commenced a Tort action in the United States District Court - Southern District of New York on or about February 13, 1975 against Appellees The Veterans Administration of the United States of America and The United States of America, wherein it was alleged that agents acting on behalf of the Appellees committed medical malpractice against the Appellant and omissions of negligent magnitude on or about September 1, 1965 and on or about October 23, 1965. In addition it was alleged that the Appellees conspired to cause the illegal detention of the Appellant in the psychiatric ward of the Bellevue Hospital in the City and State of New York. A negligent aspect of the complaint was additionally based on the Appellees' committed omissions in refusing to provide medical care to which Appellant was legally entitled and thus aggravating pre-existing severe illnesses of which the Appellees had knowledge. Appellant sought redress contending that his medical illnesses and disabilities were severely aggravated due to the negligent acts

of the Appellees thus requiring the Appellant to undergo extensive medical and hospital treatment outside the United States of America. Appellant sought redress for pain, suffering, loss of earnings and humiliation caused by the negligence of the Appellees.

The Appellees, represented by the United States Attorney for the Southern District of New York, moved the Court to dismiss the Complaint as time-barred in accord with the statute of limitations prescribed by 28 U.S.C. § 2401 (b) under the Federal Tort Claims Act. On the 6th of October 1975, the Motion was granted. (Appendix Page -4-). The Appellant filed a Notice of Appeal and thereafter moved to dismiss the Appeal without prejudice to renewal, so as to enable an application before the District Court in accord with Rule 60 (b) (2) of the Federal Rules of Civil Procedure. On the 22nd of September 1976 the Motion was granted (Docket No. 11).

Appellant then moved the United States District Court-Southern District of New York to enter an order relieving the Appellant of its former order dismissing the action on the basis of the new evidence submitted. (Appendix Pages 15 thru 31). The Appellant contended that the statute of limitations must be tolled because the new evidence submitted showed that the Appellee Veterans Administration found the Appellant totally disabled from a time prior to the dates the Appellees were alleged to have committed the negligent acts (Appendix Pages 15, 18, 26 and 27), and that two medical reports (Appendix Pages 16, 19, 20, 26, 29, 30 & 31), even though they are essentially untrue, showed a *prima facie* case of mental incapacity of the Appellant due to a mental illness, and that the Appellant was and still is under continuous medical treatment for the original illnesses and their permanent damages (Appendix Pages 21 thru 24 & 28), and that Appellant's authoritative discovery of the negligent acts was made on September 24, 1974 only (Appendix Pages 16, 21 thru 24, 28 thru 31.)

On January 27, 1977, this Rule 60 (b) (2) Motion was denied without a decision given on three of the four points raised and on the sole grounds that "Insanity such as constitutes a legal disability in most States, does not toll the statute of limitations under the Federal Tort Claims Act (Appendix Pages 32 & 33).

On March 21, 1977, Appellant filed a Notice of Appeal against this decision and a Request for Reinstatement of the Original Appeal (Docket No. 15.).

B. Statement of Facts relevant to the Issues presented for Review

1. District Judge Charles M. Metzner held no hearings prior to rendering the herein appealed decisions dated October 6, 1975 and January 27, 1977 (Appendix Pages 4, 32 & 33), nor did he make the required inquiry in depth which had been necessary for the purpose of selecting the proper facts and grounds applicable to tolling the statute of limitations from the abundance of facts and grounds which said Judge knew were available in this case from Appellant's case 75 Civ 15 (CMM) which was pending before said Judge simultaneously (Exhibits Pages 2 thru 53). (For details, kindly see Paragraph IV. 5. of this Brief).

2. Said Judge did not rule on Appellant's contention that the "continuous treatment rule" tolls the statute of limitations in this case. This fact was pointed out in Appendix Page 28 and was proved by Appendix Pages 21 thru 24 which show that the Appellant has been in continuous treatment for the original illnesses and for the permanent damages caused by them since the year 1965 and that this medical treatment continued to September 23, 1974 and will continue for the rest of Appellant's life.

3. Said Judge did not rule on Appellant's contention that his authoritative discovery of the negligent acts was made on September 24, 1974 only, the date of Appendix Pages 21 thru 24, and that the statute of limitations could at best start running from then on only.

This fact was pointed out in Appendix Pages 16, 28 thru 31.

4. Said Judge did not rule on Appellant's contention that the fact the Appellee Veterans Administration determined from Appellant's medical records that the Appellant was totally disabled since May 18, 1965 to the present and that filing of his Disability Insurance claim under his National Service Life Insurance Policy was impossible until October 13, 1974 due to circumstances beyond Appellant's control must also toll the statute of limitations pertaining to Appellant's administrative tort claim against Appellee Veterans Administration until August 2, 1974 at least, when it was actually filed.

This was pointed out in Appendix Pages 15, 26 & 27 and was substantiated in Appendix Page 18 and is further substantiated in Paragraph (E) of Exhibits Page 1A. It can be seen therefrom that retroactive waiver of premium to a date earlier than one year prior to receipt of claim, as was done in Appellant's case, is only possible if the Administrator finds that the Insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances ~~X~~ beyond the Insured's control.

5. The herein appealed two decisions are void under Common Law and under the United States Constitution because prior to rendering these decisions said Judge had pending before him the Appellant's Application for Writs of Mandamus - File No. 75 Civ 315 - District Judge Charles M. Metzner - United States District Court-Southern District of New York (Exhibits Pages 2 thru 18), together with Appellant's AFFIDAVIT dated September 9, 1974 and resworn October 15, 1974 (Exhibits Pages 19 thru 49), together with many other Exhibits.

These documents showed that the Appellant had in the year 1965 been criminally malpracticed on by physicians in New York City for the purpose of causing him a so-called "natural death" on the orders of the New York Crime Syndicate and New York City Police Department; that he had been further criminally malpracticed on and had been denied proper medical treatment by all United States government and private physicians seen, that he had simultaneously been poisoned by illegally adulterated water, food and medicines, and had been made fatally ill and severely allergic, and that he is since that time up to the present time being persecuted in all countries he visited by INTERPOL and other agencies of the Appellee United States of America as well as by the functionaries of organized medicine and by the functionaries of the fraternal organizations; that the Appellant had since that time been kept ill by these means and additional criminal medical mal-practices and that he had been close to death due to such actual murder attempts several times since the year 1965; that there has since prior to May 18, 1965 been a continuous conspiracy to murder and otherwise violate Appellant's civil rights, constitutional rights and human rights, as well as continuous actual violations of Appellant's civil rights, constitutional rights and human rights, including infliction of great bodily harm; continuous duress and undue influence, as well as a continuous conspiracy to obstruct justice and the due administration of the laws with respect to the Appellant, as well as continuous refusal of consular protection, a statutory right of Appellant pursuant to 22 U.S.C. § 1731 and § 1732, as well as illegal incarcerations for over 7 months in 1965, 1967 and 1968 in two mental hospitals under the auspices of agencies of the Appellee United States of America, as well as continuous adulteration of drinking water, food and medicines, with only short interruptions, for the purpose of poisoning the Appellant via his severe allergies from the original medical malpractices, and unlawful persecution of the Appellant in general. That there were at least 25 ^{Criminal} Federal Statutes severely violated in Appellant's case not to speak of New York State criminal statutes. That the then United States Attorney for the Southern District of New York abused his discretion and refused to

investigate and prosecute Appellant's serious and provable charges inspite of the fact that the Appellant had with the original Complaint submitted proof that on six separate occasions in March, April and May of 1974 registered letters from the Appellant to prominent New York City attorneys were defrauded by officials of the Appellee's United States Post Office Department and the postal return receipts were forged. (Exhibits Pages 13, 14, 46, 47 & 48). Instead, said United States Attorney moved to dismiss Appellant's Application for Writs of Mandamus by invoking his discretion to take this inactions, all of which proves the magnitude of the conspiracy to obstruct justice and the due administration of the laws, as well as the duress and undue influence exercised upon the Appellant. Said Judge granted Appellee's Motion for dismissal with decision dated August 6, 1975 (Exhibits Pages 50 thru 53), two months prior to rendering the first of the two herein appealed decisions and while the case herein appealed was already pending with said Judge since many months. Due to the unusual and scandalous nature of Appellant's Mandamus Complaint, said Judge could not possibly forget it. Said Judge even refused Appellant's request for direct referral of the Mandamus case by said Judge to the Federal Grand Jury, even though he confirmed this right which in Appellant's opinion was even his duty pursuant to 18 U.S.C. § 4 in view of the magnitude of the crimes involved. The Appellant thereafter requested the Federal Grand Jury for the Southern District of New York direct for an investigation and never received a reply from said Federal Grand Jury.

Because said Judge had all the facts about the criminal persecution of the Appellant before him, the Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint dated July 9, 1975, issued by Appellant's former attorney without Appellant's knowledge and consent and against Appellant's clear instructions mentioned only the fact that the Appellant refuses to return to the United States because of "fear of being poisoned or put to death by various agencies of the United States government" (Appendix Pages 6 and 7). This fact alone proves that the Appellant has been and still is under duress and undue influence from the Appellees and others.

Subsequent to the herein appealed decision dated October 6, 1975 (Appendix Page 4) and prior to the herein appealed decision dated January 27, 1977 (Appendix Pages 32 & 33) the Appellant submitted to said Judge his Notice of Appeal dated December 1, 1975 (Appendix 9 thru 14) in which, among other things, it was pointed out once more that Appellee's United States Embassy in Paris illegally kept the Appellant prisoner under severe duress and undue influence in Sainte Anne Mental Hospital in Paris, France, from June 13, 1967 to January 3, 1968 in cooperation with the Paris Police Department, and that during that period of Appellant's illegal detention and torture with the drug HALOPERIDOL the normal two years statute of limitations for this administrative Tort claim ended on or about November 4, 1967 (Exhibits Pages 54 & 55).

The essentially untrue contents of the attached letter dated August 11, 1967 from the Appellee's United States Department of State to the late Congressman William F. Ryan prove the conspiracy, duress and undue influence brought upon the Appellant by the Appellee United States of America and also shows that Appellant "fled (from the United States) to escape the clutches of a gang which was after him", a further indication of duress and undue influence. (Exhibits Pages 56 & 57).

The contents of attached letter dated 17th October 1976 from Faculté de Médecine de Paris-Cochin - Service Hospitalo-Universitaire de Santé Mentale et de Thérapeutique du Professeur P. Deniker (Sainte Anne Hospital) in Paris, France, to the Appellant, refusing disclosure and release of Appellant's Sainte Anne Mental Hospital chart, shows that this was an illegal detention for which the hospital's psychiatric staff declines responsibility (Exhibits Pages 58 & 59). This also proves that Appellee's United States Embassy in Paris and Department of State in Washington, D.C., severely violated the consular protection statute 22 U.S.C. § 1731 and § 1732, in respect to this unjust imprisonment by the government of France.

In that Notice of Appeal said Judge was also informed that the Appellee's United States Social Security Administration, having examined Appellant's medical records, determined with award dated April 21, 1975 that Appellant's disability pursuant to the Social Security laws began on August 11, 1967 and was continuous. Meanwhile, Appellee's United States Social Security Administration's Benefit Information dated December 30, 1976, attached hereto, changed the onset of Appellant's disability from August 11, 1967 to May 18, 1965 (Exhibits Page 60). This date of May 18, 1965 conforms now with Appellee Veterans Administration's determination (Appendix Page 18). Appellant's application for review of the date of entitlement of the Social Security pension is still pending before an Administrative Law Judge of that agency.

In that Notice of Appeal said Judge was also informed that the Appellant received one written death threat (Exhibits Pages 61 & 62) and numerous oral ones from May 18, 1965 on. It is Appellant's understanding that the initiator of this written offer of a Mausoleum, which was not part of a general mailing, and which was not appropriate for Appellant's then age of 50 years, Rabbi Dr. Max Koppel, was at that time under a suspended criminal sentence from a Federal Court and that he was meanwhile murdered by overt violent means.

In that Notice of Appeal said Judge was also informed that as part of the duress and undue influence brought upon the Appellant, Appellant's father and mother were permanently crippled by accidents that were deliberately and criminally arranged by Appellant's persecutors.

And the duress and undue influence, malfeasance and conspiracy to obstruct justice and the due administration of the laws, including refusal of mandatory consular protection, brought to bear upon the Appellant by the various agencies of the Appellee United States of America mentioned in said Notice of Appeal were pointed out to said Judge in more detail in Appellant's AFFIDAVIT dated September 19, 1974 and resworn on October 15, 1974 (Exhibits Pages 19 thru 49).

As further proof of the duress and undue influence and of the conspiracy which even prevail up to the present time against the Appellant in conjunction with infliction of considerable bodily harm that Notice of Appeal informed said Judge that Appellant's strenuous efforts to obtain the services of an attorney for this scandalous case were entirely unsuccessful, and that his former attorney committed serious misconduct due to these circumstances.

Said Judge could also see from the contents of Bellevue Psychiatric Hospital's essentially untrue "Report of Treatment in Hospital" dated March 6, 1975 (Appendix Page 19) and The Presbyterian Hospital's essentially untrue letter to the Appellee Veterans Administration dated March 6, 1975 (Appendix Page 20) the extent of the conspiracy, duress and undue influence brought upon the Appellant and that the Appellant told the Bellevue physicians already in October 1965 that aside from the criminal medical malpractice the case behind it was a criminal case and that he wanted to see the District Attorney whose office he actually telephoned on his way to Bellevue Hospital at Jacobi Hospital on Saturday, October 23, 1965 and was told to phone back on Monday, October 25, 1965 when he was actually a prisoner in Bellevue Psychiatric Hospital by that time and not permitted to use a telephone at will.

As part of the proof of Appellee's United States Department of State's refusal to accord the Appellant the mandatory consular protection, there is attached hereto the letter dated September 9, 1976 from Appellee's United States Embassy in Bonn, Federal Republic of Germany, (Exhibits Page 63) in response to the Appellant's detailed ~~XXXXXX~~ ~~XXXXXX~~ request for consular protection addressed to the then United States Ambassador Hillebrand and personally delivered to his residence by the Appellant.

Appellant has on April 12, 1977 filed a Complaint in the United States District Court for the District of Columbia against the Appellee United States of America and the Department of State and 15 known individual Defendants connected with the Department of State for refusing consular protection to the Appellant, conspiracy to violate his civil

rights, actual violations of his civil rights, etc.
(U.S.D.C.D.C. - Civil Action File No. 77-0702 Judge Flannery).

6. It was not the intent of Congress to deprive anyone prevented by criminal and unlawful means from timely filing of his rights under the Federal Tort Claims Act, and Common Law tolls the statute of limitations in such cases, and Appellant's case is of this nature, and said Judge had such evidence before him. (For the facts and evidence, kindly see the preceding paragraph IV. 5.)

7. Common Law does not permit the Appellees to deprive anyone of his legal rights in general by unlawful means, as they still do to this date with respect to the Appellant, and then be the beneficiary of such unlawful actions, because this is "contra bonos mores" and tolls the statute of limitations in such cases, and Appellant's case is of this nature, and said Judge had such evidence before him. (For the facts and evidence, kindly see the preceding paragraph IV. 5.)

V. ARGUMENT

It is the Appellant's contention that the herein appealed decisions dated October 6, 1975 and January 27 1977 (Appendix Pages 4, 32 & 33) are void under the United States Constitution and under Common Law and that the statute of limitations must be tolled in this case for the following reasons:

1. District Judge Charles M. Metzner held no hearings before he rendered the herein appealed two decisions and did not permit or carry out the required inquiry in depth which was necessary in this case for the purpose of selecting the proper facts and grounds applicable to tolling the statute of limitations from the abundance of facts and grounds which said Judge knew were available in Appellant's case.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process of law and equal protection of the laws).

Appendix Pages 6, 7, 9 thru 31; Exhibits Pages 2 thru 53.

2. Said Judge did not rule on Appellant's contention that the "continuous treatment rule" tolls the statute of limitations in this case.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process of law and equal protection of the laws).

Accardi v. U.S., DCSDNY, 356 F. Supp. 218 (1973).

Appendix Pages 15 thru 18, 21 thru 24, 28.

3. Said Judge did not rule on Appellant's contention that his authoritative discovery of the negligent acts was made on September 24, 1974 only, and that the statute of limitations could at best start running from that date on only.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process of law and equal protection of the laws).

Hammond v. U.S., DCEDNY, 388 F. Supp. 928 (1975);

Hulver v. U.S., DCWD Mo., 393 F. Supp. 749 (1975);

Kingston v. U.S., DCED Tenn., 265 F. Supp. 699 (1967); affirmed 396 F. 2d 9, certiorari denied 89 S.Ct. 396, 393 U.S. 960, 21L Ed 2d 373;

Kuhne v. U.S., DCED Tenn., 267 F. Supp. 649 (1967).

Appendix Pages 16, 21 thru 24, 28 thru 31.

4. Said Judge did not rule on Appellant's contention that the fact that Appellee Veterans Administration determined from Appellant's medical records that the Appellant was totally disabled since May 18, 1965 to the present and that filing of his Disability Insurance claim was impossible until October 13, 1974, when it was actually filed, due to circumstances beyond Appellant's control, must also toll the

statute of limitations pertaining to Appellant's administrative tort claim against the same Appellee Veterans Administration until August 2, 1974 at least, when it was actually filed.

This is a violation of the 5th and 14th Amendments of the United States Constitution (due process of law and equal protection of the laws).

Appendix Pages 15, 18, 26 thru 31; Exhibits Page 1A.

5. The herein appealed two decisions are void under Common Law and under the United States Constitution because said Judge had prior knowledge of the fact that the Appellant by criminal, unlawful and unconstitutional means (continuous conspiracy to violate Appellant's civil rights, constitutional rights and human rights; continuous actual severe violations of Appellant's civil rights, constitutional rights and human rights, including infliction of great bodily harm; continuous duress and undue influence upon the Appellant; continuous conspiracy to obstruct justice and the due administration of the laws; malfeasance of United States government officials with respect to Appellant's case; illegal refusal of consular protection, a statutory right of Appellant pursuant to 22 U.S.C. § 1731 and § 1732; criminal medical malpractice and nonpractice by United States government physicians and private physicians in the United States and in Europe; illegal and criminal adulteration of drinking water, food and medicines for the purpose of poisoning the Appellant on the part of New York State and New York City authorities and authorities of foreign countries and private persons with the full cooperation and condonance of the law enforcement agencies and prosecutors to whose attention these crimes were repeatedly brought by the Appellant, was prevented from filing his tort claim within the two years statute of limitations under the Federal Tort Claims Act, Title 28 United States Code § 2401 (b).

There were at least 25 Federal criminal statutes violated in Appellant's case, not to speak of New York State statutes and criminal statutes of European countries.

These unlawful actions against the Appellant toll the statute of limitations in this case pursuant to Common Law.

National Bank of Savannah v. All, S.C., 260 F. 370 (1919);
Philco Corporation v. RCA, DCED Penn., 186 F. Supp. 155 (1960);
Davis v. Wilson, DCED Tenn., 349 F. Supp. 905 (1972);
O'Connor v. Donaldson, Supreme Court Reporter 95 S.Ct. 2486 (1975)

54 Corpus Juris Secundum § 168, § 197 and § 213;
15A Corpus Juris Secundum § 62;

4th, 5th, 8th and 14th Amendments of the United States Constitution (right to be secure in his person; right not to be deprived of life, liberty, or property without due process; nor infliction of cruel and unusual punishment; right to equal protection of the laws);

18 U.S.C. §241, §242, §1510, §1113, §113, §114, §13, §4, §201, §245, §371, §1702, §1703, §1709, Chapters 95, 96, §2232, §2511; §1511;

22 U.S.C. §1731, §1732, §1199, §1007;

42 U.S.C. §1983, 1985;

Appendix Pages 6, 7, 9 thru 31;

Exhibits Pages 1A thru 63.

6. It was not the intent of Congress to deprive anyone prevented by criminal and unlawful means from timely filing of his rights under the Federal Tort Claims Act, and Common Law tolls the statute of limitations in such cases, and said Judge knew that Appellant's case is of this nature.

(Kindly see citations in preceding paragraph V.5.
and National Bank of Savannah v. All, S.C.,
260 F 370 (1919) Pages 381, 384 & 385.)

7. Common Law does not permit the Appellees to deprive anyone of his legal rights in general by unlawful means, as they have been doing all along and are still doing to this date with respect to the Appellant, and then be the beneficiary of such unlawful actions, because this is "contra bonos mores" and tolls the statute of limitations in such cases, and said Judge knew that Appellant's case is of this nature.

(Kindly see citations in preceding paragraph V.5.
and National Bank of Savannah v. All, S.C.,
260 F 370 (1919) Pages 381, 384 & 385.)

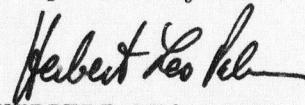
VI. CONCLUSION

It is respectfully prayed that this Court enter an order relieving the Appellant of the herein appealed two orders of the United States District Court for the Southern District of New York dismissing the action herein as time barred, together with such other relief as is just and proper.

Should this Court wish to see additional evidence, the Appellant would be pleased to submit same on request. Due to the large volume of evidence on hand, it is requested that the type of evidence wanted be specified.

Dated: Frankfurt/Main, Germany
July 20, 1977

Respectfully submitted,



HERBERT LEO PALM

-Plaintiff-Appellant-Pro Se-

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CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENTS

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

of the state in which committed or of the United States.^{8,30}

§ 62. Conspiracy to Obstruct or Pervert Justice or Hinder the Execution of Law

- a. In general
- b. Obstructing course of judicial proceedings
- c. Obstructing administration of election laws

a. In General

A combination for the purpose of obstructing justice or the administration of the laws is a criminal conspiracy.

§ 30 Origin of plan prior to enactment of statute

Although plan for payoff for award of contract by city had its origin prior to enactment of statute, on adoption of statute, plan contemplating use of interstate facilities and interstate travel became unlawful, membership of defendants in plan was converted into membership in unlawful conspiracy and that conspiracy continued until accomplishment of last of its objects.

U.S.—U. S. v. Kubnicki, D.C.Pa., 237 F.Supp. 658.

8. Ala.—Mitchell v. State, 27 So.2d 30, 32 Ala.App. 467, affirmed in part and reversed in part on other grounds 27 So.2d 36, 248 Ala. 169. Cal.—People v. Vanderpool, 128 P.2d 513, 20 C.2d 16.

Ky.—Corpus Juris Secundum cited in Frick v. Commonwealth, 239 S.W.2d 634, 655, 313 Ky. 163.

Ky.—Corpus Juris cited in Commonwealth v. Donoghue, 63 S.W.2d 3, 8, 250 Ky. 343.

Mich.—People v. Tenerowicz, 253 N.W. 296, 266 Mich. 276.

Minn.—State v. Township, 182 N.W. 773, 149 Minn. 5, 17 A.L.R. 253.

N.J.—State v. Shipley, 77 A.2d 38, 16 N.J.Super. 245.

N.Y.—People v. Harris, 63 N.E.2d 17, 294 N.Y. 424.

Utah.—State v. Erwin, 120 P.2d 285, 101 Utah 365.

12 C.J. p 565 note 11.

Obstructing Justice as substantive offense see Obstructing Justice § 1 et seq.

Such an offense was recognized at common law and generally punishable as a misdemeanor. Now, quite generally, it has been made a statutory crime and, under some circumstances, a felony.

Cal.—Lorenson v. Superior Court in and for Los Angeles County, 216 P.2d 859, 865, 35 C.2d 49.

Statute held valid Cal.—Calhoun v. Superior Court In and For San Diego County, 221 P.2d

474, 46 C.2d 18, appeal dismissed 76 S.Ct. 1029, 351 U.S. 960, 109 L.Ed. 1481—Lorenson v. Superior Court in and for Los Angeles County, 216 P.2d 859, 35 C.2d 49.

Davis v. Superior Court In and For Marin County, 345 P.2d 513, 175 C.A.2d 8—People v. Sullivan, 218 P.2d 520, 113 C.A.2d 510.

Gist of offense

(1) Gist of crime of conspiracy to obstruct due administration of laws is criminal agreement and there is criminal liability on making of agreement and an overt act in furtherance of it, whether plan falters or prevails.

N.J.—State v. La Fera, 171 A.2d 311, 35 N.J. 75.

(2) The gist of "conspiracy" as defined in statute relating to perversion or obstruction of justice or of due administration of the laws, is agreement to do an unlawful act, either as a means or as an end, and, if the unlawful act is merely malum prohibitum, the agreement must have been entered into with criminal intent as distinguished from purpose to do act prohibited in ignorance of the prohibition.

N.Y.—People v. Harris, 63 N.E.2d 17, 294 N.Y. 424.

Acts constituting contempt of court

Defendants could be convicted of conspiracy to obstruct justice, in violation of statute, even though acts alleged in indictment constituted contempt of court under rule.

N.J.—State v. Nagle, 207 A.2d 689, 44 N.J. 209.

Evil motive

Accused charged with conspiracy to suppress information relating to alleged murder by withholding knowledge of whereabouts of body of deceased was entitled to acquittal even though misprision of felony exists in Massachusetts, where no evil motive to prevent or delay administration of justice was shown, but only a failure to disclose finding of body motivated by fear of self-

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Conspiracy C-34.

Any confederacy or combination, the purpose of which is to obstruct the due course of justice or the due administration of the laws, is, sometimes under statutes expressly so providing, an indictable conspiracy,⁹ whether the object of the conspiracy is to obstruct the administration of statutory law or of the common law,¹⁰ and whether the object is to obstruct the course of public justice in a civil or criminal proceeding.¹¹

It is an offense to conspire to impede an officer of the law in the discharge and performance of his duty,¹² to prevent by force the execution of a

incrimination or at least a fear of exposure of criminal purpose wholly unconnected with the body.

Mass.—Commonwealth v. Lopes, 61 N.E.2d 819, 318 Mass. 453.

Under federal general conspiracy statute

(1) A prosecution under the federal general conspiracy statute, 18 U.S.C.A. § 371, may result from an agreement or combination of two or more persons and an overt act to violate the statute punishing the interference with, or obstruction of, justice, 18 U.S.C.A. § 1503.

U.S.—Craig v. U. S., C.C.A.Cal., 81 F.2d 816, certiorari dismissed 56 S.Ct. 670, 298 U.S. 637, 80 L.Ed. 1571, and Weinblatt v. U. S., 56 S.Ct. 671, rehearing denied Craig v. U. S., 83 F.2d 450, certiorari denied 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1108, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 157, certiorari denied Weinblatt v. U. S., 56 S.Ct. 959, 298 U.S. 690, 80 L.Ed. 1108, rehearing denied 57 S.Ct. 6, 299 U.S. 620, 81 L.Ed. 157.

U. S. v. Siegal, D.C.N.Y., 152 F.Supp. 370.

(2) Conspiracy to commit offense against United States generally, see supra § 48.

10. N.J.—State v. Dougherty, 93 A. 98, 86 N.J.Law 525, reversed on other grounds 96 A. 56, 58 N.J.Law 203, L.R.A.1916C 991.

Pa.—Commonwealth v. Stambaugh, 22 Pa.Super. 386.

Public bidding statute

N.J.—State v. La Fera, 161 A.2d 203, 61 N.J.Super. 489, affirmed in part, reversed in part on other grounds 171 A.2d 311, 35 N.J. 75.

N.Y.—People v. Barcika, 195 N.Y.S.2d 97, 9 A.D.2d 1002.

11. Ky.—Corpus Juris cited in Commonwealth v. Doneghue, 63 S.W.2d 3, 8, 250 Ky. 343.

S.C.—State v. De Witt, 20 S.C.L. 282, 27 Am.B. 371.

12. Cal.—Lorenson v. Superior Court

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warrant;¹³ to procure or permit the escape of a prisoner;¹⁴ or prevent an arrest;¹⁵ to harbor or conceal a person for whose arrest a federal warrant has been issued, with knowledge of its issuance;¹⁶ to make an unlawful use of legal process;¹⁷ to cause an illegal arrest and imprisonment;¹⁸ or to bribe a member of a legislative body.¹⁹

A conspiracy with or among public officials not to perform their official duties with respect to enforcing the criminal laws is indictable as a con-

spiracy to obstruct justice.²⁰ A conspiracy of those engaged in police duty or in the armed forces, in the face of an emergency or otherwise, to coerce others to cease maintaining law and order or defense is illegal.^{20.5}

On the other hand, conspiracies to commit acts for the perversion or obstruction of justice or of the due administration of the laws as defined by statute do not comprehend agreements to accomplish lawful ends by lawful means.^{20.10} It has been held that the

act of the p. in withhold right to do ministration of conspirac

Various of been held to stration of tain a fraudo means of an

Forcibly of United States denounced co der, or delay t States, and it Congress decl the United St the meaning prevent by fo goods to fulfi was not withi conspiracy mu the authority

N.Y.—People v. 294 N.Y. 424.

21. U.S.—Fain 525, 126 C.C.A.

22. Particular c ing justice

(1) Agreement for office with latter would pro he would admini post at the will o his appointment.

M.Y.—People v. S 368.

(2) Distribution ing disobedience.

M.Y.—People v. N 279, 224 App.D.

(3) To enforce from the wages ceding expressly etc.

Pa.—Commonwea Pa.Super. 386.

(4) To prevent summons in m trials, and to char in pursuance of N.Y.—People v. S 11 Misc. 362.

(5) To teach should not enlist Naval forces of th that citizens of the old the United Sta war.

Minn.—State v. T 773, 149 Minn. 5, 1

(6) To withdraw person from an

In and for Los Angeles County, 216 P.2d 859, 25 C.2d 49.

Mo.—State v. Ripley, 31 Mo. 386, 12 C.J. p. 566 note 20.

Under federal statute

(1) Agreement to interfere with performance by government officer of his official duties by causing him to be arrested unlawfully was violation of statute, 18 U.S.C.A. § 372, making it offense for two or more persons to conspire to impede or injure officer of United States. U.S.—U. S. v. Hall, C.A.Va. 312 F.2d 819, certiorari denied Hall v. U. S., 86 S.Ct. 25, 282 U.S. 812, 15 L.Ed. 2d 69.

(2) Fact that alleged illegal agreement between defendant and alleged co-conspirator was not accomplished would not prevent conviction of defendant under statute, 18 U.S.C.A. § 372, making it offense if two or more persons conspire to impede or injure officer of United States. U.S.—U. S. v. Hall, C.A.Va. 312 F.2d 819, certiorari denied Hall v. U. S., 86 S.Ct. 25, 282 U.S. 812, 15 L.Ed. 2d 60.

Withholding information

Conspiracy to induce person to withhold information from officers charged with administration of law is impeding and obstructing administration of justice, and, if done for payment of price, it is corruptly done. U.S.—Zandloch v. U. S., C.A.Cal. 193 F.2d 889, certiorari denied 72 S.Ct. 770, 313 U.S. 934, 96 L.Ed. 1342.

13. Mo.—State v. McNally, 34 Mo. 210, 56 Am.D. 651.

14. U.S.—U. S. ex rel. Silverstein v. Hecht, D.C.N.Y. 10 F.2d 370, affirmed, C.C.A., U. S. ex rel. Didato v. Hecht, 10 F.2d 371—Ex parte Lyman, D.C.Wash. 202 F. 303.

Tex.—Kipper v. State, 62 S.W. 420, 42 Tex.Cr. 613.

Presenting void bail bond

Conspiracy to obtain release of person charged with a felony by presenting a worthless and void bail bond is a perversion of the due administration of the law within a statute making it an offense to conspire to pervert the due administration of the laws.

Cal.—Lorenson v. Superior Court in

and for Los Angeles County, 216 P.2d 859, 25 C.2d 49.

People v. Ambrose, 160 P. 810, 31 C.A. 460.

Statute denouncing conspiracy to break prison

La.—State ex rel. Priest v. Coverdale, 15 So.2d 819, 204 La. 418.

15. U.S.—Davis v. U. S., Tenn. 107 P. 753, 46 C.C.A. 619.

16. U.S.—Fullbright v. U. S., C.C.A. Mo., 91 F.2d 210.

Knowledge an essential element

Evidence of general malice or intent is insufficient if the specific knowledge required by statute is lacking. U.S.—Fullbright v. U. S., C.C.A.Mo., 91 F.2d 210.

Personating another

An agreement whereby one of the defendants, who had been sentenced to the workhouse for a violation of an act of Congress, and who was at liberty on bail, agreed to pay another defendant a fixed sum of money to surrender himself at the workhouse and serve the sentence, the convicted defendant meanwhile remaining in hiding, was a conspiracy to commit an offense against the United States. U.S.—Biskind v. U. S., C.C.A.Ohio, 284 F.2d 1377, certiorari denied 43 S.Ct. 23, 260 U.S. 731, 67 L.Ed. 486.

17. Ill.—Slomer v. People, 25 Ill. 70, 76 Am.D. 786.

Mont.—Finlen v. Heinze, 73 P. 123, 28 Mont. 548.

18. Mo.—State v. Davies, 80 Mo.App. 239.

19. N.J.—State v. Dougherty, 93 A. 98, 86 N.J.Law 525, reversed on other grounds 96 A. 56, 88 N.J. Law 299, L.R.A.1916C 991.

Pa.—Commonwealth v. Richardson, 73 A. 222, 229 Pa. 609.

20. Cal.—Lorenson v. Superior Court in and for Los Angeles County, 216 P.2d 859, 25 C.2d 49.

People v. Sullivan, 248 P.2d 520, 113 C.A.2d 510.

Mich.—People v. Tenerowicz, 253 N.W. 296, 266 Mich. 276.

Agreement with violators of law

In order to constitute a conspiracy among city officials and others to al-

low violation of anti-vice laws, it was not necessary that the agreement complained of was between the officials and persons who operated the illegal activities, the statute being violated when officials whose duty it was to enforce the law agreed among themselves and their agents that they would not enforce it. Utah.—State v. Erwin, 120 P.2d 258, 101 Utah 355.

Receipt or disposition of money

In prosecution for conspiracy to obstruct justice by permitting operation of houses of ill fame and gambling establishments in city, controlling question was whether defendant knowingly and willfully participated in the conspiracy, and not whether defendant had received money from co-defendants or directed the disposition of such money. Mich.—People v. Kanar, 22 N.W. 359, 211 Mich. 212.

Permitting houses of ill fame to operate

Conspiracy with or among public officials to permit the keeping and operation of houses of ill fame is a criminal conspiracy. Mich.—People v. Tenerowicz, 253 N.W. 296, 266 Mich. 276.

20.5 N.Y.—Opera on Tour v. Weber, 34 N.E.2d 349, 285 N.Y. 348, motion denied 19 N.Y.S.2d 1020, 259 App. Div. 806, reargument denied 35 N.E.2d 920, 286 N.Y. 565, certiorari denied 62 S.Ct. 96, 314 U.S. 618, 36 L.Ed. 495, rehearing denied 62 S.Ct. 477, 314 U.S. 716, 86 L.Ed. 670, motion denied 33 N.E.2d 277, 287 N.Y. 619.

20.10 N.Y.—People v. Harris, 63 N.E. 2d 17, 291 N.Y. 424.

Creation of new office and appointment

Where attorney general brought action to remove from office Commissioner of Water Supply of City of Albany for refusal to sign waiver of immunity when questioned before grand jury concerning his official affairs, action of municipal officers in creating position of Superintendent of Water Rent Delinquencies and appointing commissioner to that office did not constitute conspiracy for perversion of justice, or obstruction of justice. (1) To prevent summons in m trials, and to char in pursuance of N.Y.—People v. S 11 Misc. 362.

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Minn.—State v. T 773, 149 Minn. 5, 1

(4) To withdraw person from an

act of the purchaser of a homestead relinquishment in withholding it from filing which he has a legal right to do is not an interference with the due administration of the law, such as may sustain a charge of conspiracy.²¹

Various other combinations or agreements have been held to be conspiracies to obstruct the administration of justice,²² such as an agreement to obtain a fraudulent divorce^{22.5} or to obtain money by means of an unfounded and fraudulent lawsuit.^{22.10}

Forcibly obstructing execution of federal laws. United States Criminal Code § 6, Comp.St. § 10170, denounced conspiracies to use force to prevent, hinder, or delay the execution of any law of the United States, and it was held that a joint resolution of Congress declaring a state of war to exist between the United States and Germany was a law within the meaning of the statute;²³ but a conspiracy to prevent by force private individuals from producing goods to fulfill their contracts with the government was not within the statute.²⁴ The purpose of the conspiracy must have been forcible resistance to the authority of the United States while attempt-

N.Y.—People v. Harris, 63 N.E.2d 17, which he had duly been committed

as a lunatic, by order of court.
U.S.—Brew v. Thaw, N.H., 25 S.Ct. 137, 125 U.S. 472, 59 L.Ed. 302.

Defraud devisees by destruction of will
S.C.—State v. De Witt, 20 S.C.L. 282, 27 Am.D. 371.

Taking prisoner's manuscript out of prison without permission of warden
Cal.—Davis v. Superior Court In and For Marin County, 345 P.2d 513, 175 Cal. 2d 8.

22.5 U.S.—Cole v. People, 84 Ill. 216, N.Y.—People v. Fleck, 26 N.J. 267, 125 N.Y. 324, 11 L.L.A. 807.

22.10 R.I.—State v. Bacon, 61 A. 653, 27 R.I. 252.

23. U.S.—Wells v. U. S., Wash., 257 F. 605, 168 C.C.A. 555.

24. U.S.—St. John v. U. S., C.C.A. Ill., 268 F. 808—Haywood v. U. S., C.C.A.Ill., 268 F. 795, certiorari denied 41 S.Ct. 449, 256 U.S. 689, 65 L.Ed. 1172.

25. U.S.—Baldwin v. Franks, Cal., 7 S.C.L. 656, 120 U.S. 678, 32 L.Ed. 766.
Anderson v. U. S., C.C.A.Kan., 273 F. 29, certiorari denied 42 S.Ct. 56, 257 U.S. 617, 66 L.Ed. 415.

26. U.S.—St. John v. U. S., C.C.A. Ill., 268 F. 808—Haywood v. U. S., C.C.A.Ill., 268 F. 795, certiorari denied 41 S.Ct. 449, 256 U.S. 689, 65 L.Ed. 1172.

27. U.S.—O'Connell v. U. S., Cal., 40 S.Ct. 441, 253 U.S. 142, 64 L.Ed.

ing to carry the law into execution, and a conspiracy merely to set the law at defiance was not punishable under the statute;²⁵ nor did the statute apply to forcible obstruction of the Selective Service Act of 1917 and the Espionage Act of 1917, the penal provisions of which provided specifically for the punishment of all obstructions of the recruiting and enlistment service, and repeal pro tanto § 6 of the Criminal Code.²⁶

Violation of Espionage Act. Under the Espionage Act of 1917 punishing conspiracies to obstruct recruiting when the United States was at war, a conspiracy to obstruct recruiting by persuasion was indictable.²⁷ Such a conspiracy was indictable even though no means were agreed on specifically to accomplish the object, it being sufficient that the parties agreed to work for a common purpose.²⁸

It is an offense if two or more persons conspire to violate the federal statute relating to the gathering and delivering of defense information and one or more of such persons do any act to effect the object of the conspiracy.^{28.5} The act to effect the object

827—Schenck v. U. S., Pa., 22 S.Ct. 247, 219 U.S. 47, 63 L.Ed. 470.

Newspaper articles

Articles published in German language newspaper with respect to Wall Street's having forced country into European war, to England's controlling the country, and to the draft as a measure it was excusable to resist, were held to furnish basis for conviction of writer on count charging conspiracy between him and another, both having been engaged in preparation and publication of newspaper, to violate Espionage Act.

U.S.—Frohwerk v. U. S., Mo., 29 S.Ct. 219, 219 U.S. 204, 63 L.Ed. 561.

28. U.S.—Frohwerk v. U. S., *supra*.

28.5 See 18 U.S.C.A. § 704.

Intent to injure United States

The culpability of defendants who were convicted of conspiring between 1944 and 1950 to violate Espionage Act by combining to communicate to Union of Soviet Socialist Republics documents, writings, etc., relating to national defense of United States was not to any degree lessened by virtue of lack of an allegation in the indictment of intent to injure the United States.

U.S.—U. S. v. Rosenberg, 100 F.Supp. 108, affirmed, C.A., 201 F.2d 688.

Criminal conspiracy shown

Conspiring with others to deliver writings relating to the national defense to a foreign government, and going to stated places in Washington City in furtherance thereof, constituted a criminal conspiracy to violate

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LIMITATIONS OF ACTIONS

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In accordance with the general principles, as discussed supra subdivision a of this section, the courts have determined the date on which limitations begin to run in respect of sundry particular torts or

injuries,²⁴ such as conspiracy,²⁵ injuries to or nonfeasance affecting property generally,²⁶ including the wrong or the wrong²⁷ seizure of property,²⁸ libel and slander,²⁹ malfeasance

(2) Seduction

24. U.S.—Foster & Kleiser Co. v. Special Site Sign Co., C.C.A.Cal., 85 F.2d 742, certiorari denied Special Site Sign Co. v. Foster & Kleiser Co., 57 S.Ct. 315, 299 U.S. 613, 81 L.Ed. 452.

Anti-trust laws

(1) A cause of action under the anti-trust laws arises when the damage is sustained, and the statute of limitations begins to run at that time.—Foster & Kleiser Co. v. Special Site Sign Co., C.C.A.Cal., 85 F.2d 742, certiorari denied Special Site Sign Co. v. Foster & Kleiser Co., 57 S.Ct. 315, 299 U.S. 613, 81 L.Ed. 452.—Monrad v. Paramount Pictures Distributing Co., D.C.Mass., 36 F. Supp. 568.

(2) Where a violation of the anti-trust laws is a single act on a single day, the cause of action for treble damages "accrues," and the statute of limitations begins to run, at once, and the injured plaintiff may sue for treble damages the moment his interest is invaded, not only on account of injuries suffered at once but also on account of those he will suffer in future, including what he has suffered during, and will suffer after, trial.—Monrad v. Universal Film Exchange, D.C.Mass., 43 F.Supp. 996.

Civil damage laws

An action under the civil damage laws, sounding in tort, accrues at, and limitations begin to run from, the date of such sale rather than from the date when the resulting intoxication caused loss or injury to plaintiff.—Immert v. Grill, 39 Iowa 690.

Procuring breach of contract

Attorneys' cause of action, if any, for wrongfully procuring breach of employment contract accrued, and statute of limitations commenced to run, at time attorneys were discharged.—Neff v. Willmott, Roberts & Looney, 41 F.2d 86, 170 Okl. 460.

Wrongful injunction

La.—Burgess v. Villere, 129 So. 209, 170 La. 805.

Desecration of corpse

Ga.—Barrett v. Jackson, 162 S.E. 308, 44 Ga.App. 611.

Tex.—City of Vernon v. Low, Civ. App., 158 S.W.2d 857.

25. Ind.—Montgomery v. Crum, 161 N.E. 251, 199 Ind. 660.

Kan.—McTee v. Franklin, 143 P.2d 646, 157 Kan. 665.

Mo.—Kansas City v. Rathford, 186 S.W.2d 570, 352 Mo. 1130.

Date of last overt act

A statute of limitations begins run-

ning from the date of the last proved overt act under the conspiracy regardless of the date when the original illegal agreement was made.—State on Inf. v. Taylor v. American Ins. Co., Mo., 200 S.W.2d 1.

26. U.S.—Freeman v. Town of Gallop, C.C.A.N.M., 152 F.2d 273—Brightwell v. First Nat. Bank, C. A.Colo., 109 F.2d 271.

Ga.—Southern Ry. Co. v. Leonard, 199 S.E. 433, 58 Ga.App. 574.

Idaho.—Hansbrough v. D. W. Standrod & Co., 286 P. 923, 19 Idaho 216.

Iowa.—Ashman v. City of Des Moines, 228 N.W. 316, 269 Iowa 1247, modified in other respects 229 N.W. 907, 209 Iowa 1247.

Ohio.—Mahoning Nat. Bank v. City of Youngstown, 56 N.E.2d 218, 143 Ohio St. 523.

Okl.—City of Pawhuska v. Button, 251 P. 1001, 123 Okl. 61.

Damage from sale of defective granary

Buyer's cause of action for damage to rice, caused by sale of defective granary, accrued when damage was discovered; and seller's promise that damage would not occur in future was held not to toll statute of affecting buyer's right of action for damages to rice from defective condition of granary sold.—Louisville Silo & Tank Co. v. Thwennet, 295 S.W. 710, 174 Ark. 437.

Trespass

(1) In general.—Consolidation Coal Co. v. Friedline, 3 A.2d 200, 134 Pa. Super. 1—Telford Coal Co. v. Trotter, 24 Pa.Dist. & Co. 183—Eshelman v. Lancaster County, Pa.Com. Pl., 45 Lanc.L.Rev. 609, 51 York Leg. Rec. 122.

(2) Underground trespass.—Lewey v. H. C. Fricke Coke Co., 31 A. 261, 166 Pa. 536, 28 L.R.A. 283, 45 Am. S.R. 684—37 C.J. p 981 note 90 [1] (5), (7), (8).

Waste

(1) In general.—N.Y.—Hayman v. Morris, 46 N.Y.S.2d 482.

N.C.—Sherrill v. Connor, 12 S.E. 588, 596, 107 N.C. 630.

67 C.J. p 633 note 86.

(2) Landlord's cause of action, because tenants removed balcony in building, accrued at time of removal, and statute of limitations commenced to run at that time against action for waste.—Pappas v. Braithwaite, Mont., 162 P.2d 212.

(3) The statute does not begin to run against a tenant holding an option to purchase for waste committed while it was in force, until the

option has become extinguished generally speaking out having been exercised.—Portion run from the Dayton, S. & G. R. R. Co., 16 F. 16 Or. 33, 8 Am.S.R. 251.

Negligent installation

promise of marriage.—White v. Schneebelen, 18 state of limitation 185, 91 N.H. 273.

N.Y.—Senauke v. Bronx Gas & Elec. Co., 284 N.Y.S. 710, 157 N.Y. 948.

Tex.—Edmondson v. Carroll, 147

breach of promise of marriage.

27. N.C.—Davis v. Doggett, 191

288, 212 N.C. 589—Charlotte Const. Co. v. City of Charlotte, 147

S.E. 573, 208 N.C. 309.

Tex.—Edmondson v. Carroll, 147

breach of promise of marriage.

Wrongful attachment

(1) As respects limitations, it has been held not to cause of action, for wrongful attachment on theory of nonexistence of debt, accrues until termination of the promise to pay.

main action.—First Nat. Bank v. Wisbey, 292 P. 1113, 116 Okl. 6.

The common-law

(2) Attachment of property of third person as belonging to defendant is a quasi offense, and the statute of limitations applies, even though the owner for damages may be liable for damages prescribed by one year from the time of the injury as of the time of the seizure, and not from the date of the judgment establishing title of defendant to the property.—Martenis v. American Milling Co., La.App., 178 So. 206, 49 P.2d 1131.

Wrongful writ of replevin

A cause of action for the return of property under a writ of replevin wrongfully sued out does not accrue until the custody of the law is terminated by a final judgment.—Osgood does not accrue until the determination of the public

communications

Prescription against suit for

U.S.—Kohler v. Brown, C.C.A. 481—37 C.J.

wrongful seizure under writ of

questration or of provisional seizure.

U.S.—Kohler v. Hume, 156 F.2d 9

Anderson v. G. 2d 589—Winkel

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He.—Bates St. S. 11, 182 Minn. 1

Minn.—Williams 11, 182 Minn. 1

N.Y.—Poirack v. 118—Frank v.

118—Frank v. 118—Frank v.

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or nonfeasance of corporate directors or officers or the wrongful ouster of a partner.³⁰

(2) Seduction

Generally speaking limitations against an action for seduction run from the date of the seduction.

If the action is by the woman seduced under promise of marriage, it has been held that the statute of limitations begins to run from the time of seduction³¹ and continues until the relations are broken off and for the statutory period thereafter, but the application of this rule demands that intercourse be continuous and referable, directly, by fair implication, to the original promise, at the loyalty of the woman to her expectant marriage be unbroken.³² In an action for breach of promise and seduction the statute of limitations applicable to an action for seduction has been held not to begin to run against recovery of damages therefor until the last illegal act had under the promise of marriage.³³

The coin-law action for loss of services and

expense does not accrue until the sickness deprives the parent of the daughter's services,³⁵ and until the expense, if any is sued for, has been incurred.³⁶ Where the action is under a statute giving the parent of the woman seduced a right of action for the seduction alone, before any loss of service occurs, the statute of limitations has been held to run from the act of seduction;³⁷ such action accrues, not when the father discovers the seduction, but when the act is committed.³⁸ When a parent's suit is based on seduction induced by a promise of marriage, it has been held that limitations do not begin to run as long as the intercourse continues and is induced by a continuation and renewal of such promise.³⁹

(3) Trover and Conversion

Ordinarily an action for conversion accrues and limitations run from the date of the wrongful taking or wrongful exercise of dominion over property.

Ordinarily a cause of action for trover and conversion accrues at, and limitations begin to run from, the date of the conversion,⁴⁰ but not until

(2) It has been intimated that such rule applies even though plaintiff's ignorance be due to fraud on the part of defendant.—McCarthy v. Atkinson, 27, 641, 77 Miss. 591.

(4) The state of limitations is not tolled by defendant's concealment of defendant's identity.—Staples v. Zeph, 49 P.2d 11, 9 Cal.App.2d 369.

Communication published in judicial proceedings

A cause of action for libel or slander founded on publications made in the course of judicial proceedings does not accrue until the final determination of the proceedings in which the publication is made.—Masterson v. Brown, ex., 72 F. 136, 18 C.C.A. 441—37 C.J.p 17 note 86.

38. U.S.—Kohler v. McClellan, C.C.A., La., 156 F.2d 908, certiorari denied Kohler v. Humphrey, 67 S.Ct. 203—Anderson v. Galley, D.C.Ga., 33 F.2d 589—Winkelman v. General Motors Corporation, D.C.N.Y., 44 F. Supp. 960.

Mo.—Bates St. Shirt Co. v. Waite, 156 A. 293, 130 Me. 352. Minn.—Williams v. Davis, 234 N.W. 11, 182 Minn. 186. N.Y.—Pollack v. Warner Bros. Pictures, 41 N.Y.S.2d 225, 266 App.Div. 118—Frank v. Carlisle, 27 N.Y.S.2d 44, 261 App.Div. 13, affirmed 35 N.E.2d 932, 286 N.Y. 586—Nurick v. Baker, 14 N.Y.S.2d 503.

N.J.—Squire v. Guardian Trust Co., 72 N.E.2d 137, 79 Ohio App. 371. Tex.—Conrads v. Kasch, Civ.App. 26 S.W.2d 732, error denied Kash v. Conrads, 31 S.W.2d 630, 119 Tex. 449.

Limitations as affected by continuance of corporate directors or officers in office see *infra* § 169 a.

Excessive loan

Limitation on action against bank directors for making excessive loans began to run from date on which excessive loan was made.

U.S.—Anderson v. Galley, D.C.Ga., 33 F.2d 589.

Ga.—Mohlby v. Faircloth, 164 S.E. 195, 174 Ga. 808, 83 A.L.R. 1201, answer conformed to 164 S.E. 910, 45 Ga.App. 406.

30. Okl.—Dean v. Anson, 261 P. 174, 128 Okl. 23.

Time of ouster

The statute of limitations in a suit for wrongful ouster begins to run at the time plaintiff was ousted.—Dean v. Anson, *supra*.

31. Wash.—Rockwell v. Day, 172 P. 754, 101 Wash. 589.

32. Wash.—Rockwell v. Day, *supra*. 57 C.J. p 24 note 6.

33. Wash.—Rockwell v. Day, *supra*. 57 C.J. p 883 note 52.

34. Tenn.—Jeggie v. Hayes, 208 S.W. 605, 141 Tenn. 219, 3 A.L.R. 150.

35. Va.—Clem v. Holmes, 33 Gratt. 722, 74 Va. 722, 36 Am.R. 793. 57 C.J. p 25 note 8.

36. Ky.—Wilhoit v. Hancock, 5 Bush 567.

37. Ga.—Davis v. Boyett, 48 S.E. 185, 120 Ga. 619, 102 Am.S.R. 118, 66 L.R.A. 258. 57 C.J. p 25 note 11.

38. Ga.—Davis v. Boyett, *supra*. 39. Tenn.—Davis v. Young, 16 S.W. 473, 90 Tenn. 303.

40. U.S.—Watkins v. Madison County Trust & Deposit Co., C.C.A.N.Y., 24 F.2d 370, certiorari denied 48 S.Ct. 562, 277 U.S. 602, 72 L.Ed. 1010—Colley v. Canal Bank & Trust Co., D.C.La., 64 F.Supp. 1016, affirmed, C.C.A., 159 F.2d 153.

Ark.—Thomas v. Westbrook, 177 S.W.2d 931, 206 Ark. 841—Mecham v. Mid-South Cotton Growers Ass'n, 115 S.W.2d 1978, 196 Ark. 78.

Cal.—First Nat. Bank of Richmond v. Thompson, 110 P.2d 75, 60 Cal. App.2d 79—Coy v. E. F. Hutton & Co., 112 P.2d 639, 44 Cal.App.2d 386.

Mass.—Kelley v. Thomas G. Plant Co., 174 N.E. 224, 274 Mass. 102. Nev.—Warren v. De Long, 97 P.2d 792, 59 Nev. 481.

N.J.—Weiss v. Stelling, 32 A.2d 291, 130 N.J.Law 235.

N.Y.—Guild v. Hopkins, 63 N.Y.S.2d 522, 271 App.Div. 312. 37 C.J. p 882 note 44—65 C.J. p 72 note 61.

Conversion of bank book took place, so as to start the running of limitations, on day pledgee wrongfully obtained possession of the bank book.—Iavazzo v. Rhode Island Hospital Trust Co., 155 A. 407, 51 R.I. 459.

Check

(1) Where bank by accepting check payable to corporation enabled president of corporation to convert proceeds thereof, corporation's cause of action against bank accrued when bank accepted check and not when demand was made on bank by corpo-

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er the fiduciary relations have ceased, it is incumbent on the person defrauded to take notice of what he is put on inquiry to ascertain.⁷⁶

The mere fact that one has confidence in another is not sufficient to excuse a lack of diligence in investigating to discover fraud.⁷⁷

§ 195. Fraud as a Defense

Statutes prescribing the time from which limitations shall run in actions for fraud do not apply where the fraud is set up merely by way of defense.

Statutes providing that in an action for relief on the ground of fraud limitations shall run from the time the fraud is discovered apply only as against a party who seeks affirmative relief on the ground of fraud committed by his opponent; they do not apply so as to raise a bar against a party who is seeking merely to defend his rights on the ground that a contract or transaction sought to be enforced by his opponent is fraudulent.⁷⁸ Likewise a statute providing that actions for relief against frauds must be commenced within a certain time after the cause of action accrues does not apply where the fraud is set up merely by way of defense and not as a ground for affirmative relief.⁷⁹

6. DURESS, UNDUE INFLUENCE, AND MISTAKE

§ 197. Duress and Undue Influence

In suits for relief on the ground of duress or undue influence the statute of limitations does not commence to run until the duress or undue influence has ceased.

In suits for relief on the ground of duress or undue influence, such as to set aside deeds, etc., the statute of limitations does not begin to run until the duress or undue influence ceases,⁸⁰ notwithstanding

Where a vendor of land misrepresents the area of the land included in the purchase, the rule in equity is that he cannot enforce the payment of the whole purchase money and leave the purchaser to pursue a personal action at law for the damages, but that the purchaser has the right of withholding as much of the purchase money as will reimburse him, because to that extent the consideration has failed; and in such a case as long as the contract remains unexecuted the statute does not run against the purchaser's claim, and this irrespective of the time he acquired knowledge of the fraud.⁸¹

§ 196. Cross Action or Counterclaim for Fraud

The statute of limitations will not run against a cross action to recover damages for fraud and deceit until the fraud is discovered or should have been discovered.

Under the rules considered supra §§ 184, 186, limitations will not run against a cross action to recover damages for fraud and deceit until the fraud is discovered or by the use of reasonable diligence might have been discovered,⁸² although limitations will run from that time.⁸³

it does not cease until the death of the person on whom it has been practiced,⁸⁴ although it will run from that time.⁸⁵ It seems that duress or undue influence must be the ground on which the relief is sought; the fact that it prevented plaintiff from proceeding with a suit brought on another cause of action will not interrupt the running of the statute as to that cause of action.⁸⁶

76. U.S.—Curtis v. Connly, R.L. 12 S.Ct. 100, 257 U.S. 260, 66 L.Ed. 222.

77. Tex.—Logan v. Taylor, Civ. App., 118 S.W.2d 1094, 37 C.J. p 949 note 85.

78. Cal.—In re Cover's Estate, 204 P. 582, 188 Cal. 133; Sanders v. Sanders, 3 P.2d 593, 117 Cal.App. 231.

Okl.—Corpus Juris cited in Miles v. Parkinson, 165 P.2d 644, 646, 196 Okl. 414; Corpus Juris cited in State ex rel. Barnett v. Austin, 78 P.2d 797, 800, 182 Okl. 521; Corpus Juris quoted in Dixon v. Hawkins, 62 P.2d 251, 253, 178 Okl. 250, 37 C.J. p 949 note 96.

Statute of limitations as bar to defenses generally see supra §§ 104, 116.

79. Okl.—State ex rel. Barnett v. Austin, 78 P.2d 797, 182 Okl. 524

—Dixon v. Hawkins, 62 P.2d 251, 178 Okl. 250, 37 C.J. p 949 note 97.

80. Tex.—Mason v. Peterson, Civ. App., 232 S.W. 567, 37 C.J. p 949 note 99.

81. Cal.—Cohen v. Metropolitan Life Ins. Co., 89 P.2d 732, 32 Cal. App.2d 337.

Tex.—Miller v. White, Civ. App., 112 S.W.2d 487, error dismissed, 37 C.J. p 949 note 2.

Statute of limitations as bar to counterclaim and cross demand generally see supra § 106.

Bare suspicion or opportunity to learn the truth through the exercise of reasonable diligence does not constitute knowledge of fraud sufficient to prevent recovery.—Hartford-Empire Co. v. Glenshaw Glass Co., D.C.Pa., 47 F.Supp. 711.

82. Cal.—Merchants' Ice & Cold Storage Co. v. Globe Brewing Co., App., 177 P.2d 963.

Tex.—Bensley v. Equitable Securities Co., Civ.App., 119 S.W.2d 260, 37 C.J. p 949 notes 2, 3.

83. Iowa.—Hughes v. Silvers, 111 N.W. 514, 169 Iowa 366.

Kan.—Corpus Juris cited in Motor Equipment Co. v. McLaughlin, 111 P.2d 149, 156 Kan. 258.

Mo.—Corpus Juris cited in Womack v. Callaway County, 159 S.W.2d 630, 633.

Tex.—Corpus Juris cited in Besteiro v. Besteiro, Civ.App., 45 S.W.2d 379, 386.

37 C.J. p 949 note 7.

84. Neb.—Aldrich v. Steen, 98 N.W. 415, 71 Neb. 33.

37 C.J. p 949 note 8.

85. Ariz.—Durazo v. Durazo, 173 P. 350, 19 Ariz. 571.

37 C.J. p 949 note 9.

86. N.Y.—Piper v. Heard, 13 N.Y. 632, 107 N.Y. 67, 1 Am.S.R. 785, 37 C.J. p 949 note 11.

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Whether use of limitation of frauds within the of limitation of frauds,⁸⁷ contrary,⁸⁸ shall not recover by bringing the fraud based on duress was exerted.

87. Wash. v. King, 39

Act constit.

(1) Employer's office county associations were appropriate direction, duress such statute of to recover damages as provided.

King County (2) Suggested authority, varies, might for unlawful statute by exercising so as to toll of limitation would be, and implied authority reduce number take that action.

88. P.2d 582, L.R. 1279.

89. Wash. attle, supr.

90. U.S.—S.A. All. S.C. 236.

87 C.J. p 949.

91. Kan.—D.

P. 584, 90 K.

87 C.J. p 949.

92. U.S.—S.A. All. S.C. 236.

93. Cal.—D.

Body Work

App.2d 270.

94. Corpus J.

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Whether there is such duress as will toll the statute of limitations is to be determined from all the surrounding circumstances and personal characteristics of the parties involved in each particular case.⁸⁷ The threatened action must be unlawful.⁸⁸ Duress has been held to be a species of "fraud" within the meaning of a statute providing a period of limitation for an action for relief "on the ground of fraud,"⁸⁹ although there is also authority to the contrary;⁹⁰ but a provision that the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud requires that the action for relief based on duress of the party complaining shall be brought within the specified period after the duress was exerted.⁹¹

87. Wash.—State ex rel. Bradford v. King County, 85 P.2d 670, 197 Wash. 393.

Acts constituting duress

(1) Employees in county assessor's office who were informed by county assessor that salary reductions were necessary to insure appropriate discharge of duties of office, and who thereupon accepted the reduction, were not subjected to duress such as would toll running of statute of limitations against right to recover difference between salaries as provided in budget and as reduced.—State ex rel. Bradford v. King County, *supra*.

(2) Suggestion that the municipal authority, which has right to fix salaries, might reduce them if action for unlawful reductions were instituted by employees, would not be exercising duress over employees, so as to toll the three-year statute of limitations unless suggested action would be arbitrary or capricious, and intimation that the municipal authority, having authority to reduce number of employees, might take that action, would not be such duress.—Chatfield v. City of Seattle, 52 P.2d 582, 198 Wash. 179, 121 A.L.R. 1279.

88. Wash.—Chatfield v. City of Seattle, *supra*.

89. U.S.—Savannah Nat. Bank v. All. S.C., 260 F. 370, 171 C.C.A. 316.

90. C.J. p 949 note 12.

91. Kan.—Eureka Bank v. Bay, 135 P.884, 90 Kan. 506.

92. C.J. p 949 note 13.

93. U.S.—Savannah Nat. Bank v. All. S.C., 260 F. 370, 171 C.C.A. 316.

94. Cal.—Davis Welding & Manufacturing Co. v. Advance Auto Body Works, 100 P.2d 1067, 38 Cal. App.2d 270.

95. Corpus Juris quoted in Elkhorn

Coal Corporation v. Ilite, 9 S.W.2d 1082, 1085, 225 Ky. 735.

Okl.—Corpus Juris quoted in Hoskins v. Stites, 78 P.2d 413, 414, 182 Okl. 455.

97. C.J. p 950 note 18.

Ignorance of mistake as affecting laches see Equity § 128.

93. U.S.—Knickerbocker Fuel Co. v. Mellon, D.C.N.Y., 18 F.2d 128, affirmed, C.C.A., 22 F.2d 500, certiorari denied 48 S.Ct. 320, 276 U.S. 626, 72 L.Ed. 738.

Ariz.—McCarrell v. Turbeville, 75 P.2d 361, 51 Ariz. 166.

Cal.—Bollinger v. National Fire Ins. Co. of Hartford, Conn., 154 P.2d 399, 25 Cal.2d 399—Zaknessian v. Zaknessian, 161 P.2d 677, 70 Cal. App.2d 721—Davis Welding & Manufacturing Co. v. Advance Auto Body Works, 100 P.2d 1067, 38 Cal. App.2d 270—Edwards v. Sergi, 30 P.2d 541, 137 Cal. App. 369.

Colo.—Board of Com'rs of Morgan County v. Doherty, 168 P.2d 556, 114 Colo. 504.

Fla.—First State Bank of Fort Meade v. Singletary, 163 So. 407, 124 Fla. 770.

Idaho.—Maguire v. Whillock, 124 P.2d 248, 63 Idaho 630.

Iowa.—Beerman v. Beerman, 279 N.W. 449, 225 Iowa 48, 118 A.L.R. 997.

La.—Louisiana Oil Refining Corporation v. Gandy, 121 So. 183, 168 La. 37, appeal dismissed and certiorari denied Gandy v. Louisiana Oil Refining Corporation, 50 S.Ct. 65, 280 U.S. 516, 74 L.Ed. 587—Succession of Williams, 121 So. 171, 168 La. 1—Sharpe v. Hayes, App. 171 So. 862.

Md.—Chestertown Bank of Maryland v. Perkins, 140 A. 834, 154 Md. 456.

Mass.—Stoneham Five Cents Sav. Bank v. Johnson, 3 N.E.2d 730, 295 Mass. 390, 106 A.L.R. 1332.

Ohio.—Rochin v. Miami Savings & Loan Co., App. 32 N.E.2d 384.

Okl.—Rocher v. Williams, 80 P.2d 649, 183 Okl. 221—Corpus Juris quoted in Hoskins v. Stites, 78 P.2d 413, 414, 182 Okl. 455.

Tenn.—Corpus Juris quoted in McSpadden v. Parkenson, 10 Tenn. App. 11, 18.

Tex.—Kahanek v. Kahanek, Civ.App. 102 S.W.2d 174—Texas Osage Co-op. Royalty Pool v. Garcia, Civ. App. 176 S.W.2d 708, error refused.

—Corpus Juris cited in Stegall v. McLennan County, 144 S.W.2d 1111, 1113, error dismissed, judgment correct—Kennedy v. Brown, Civ.App., 113 S.W.2d 1018, error dismissed—Luginbyhl v. Thompson, Civ.App. 11 S.W.2d 380, error dismissed—Ray v. Barrington, Civ. App. 297 S.W. 781.

Va.—Beury v. Shelton, 144 S.E. 629, 151 Va. 28.

97. C.J. p 950 notes 20, 21—21 C.J. p 246 note 15.

Ignorance of cause of action generally see *infra* § 205.

Concealment of mistake

(1) Where defendant by concealment or fraud prevents plaintiff from discovering mistake, statute begins to run from time mistake is, or might have been, discovered—Girod v. Barbe, La.App., 153 So. 326.

(2) Fraudulent concealment of cause of action generally see *infra* §§ 206, 207.

Where there was constructive fraud on part of defendant, statute ran from discovery of mistake—Wendel Foundation v. Moreland Realty Corporation, 29 N.Y.S.2d 451, 176 Misc. 1006.

In Kentucky

The statutes provide that the cause of action shall not be deemed to have accrued until the discovery of the mistake, but that the action cannot be brought ten years after the making of the mistake.—Dycus v. Dycus, 175 S.W.2d 997, 295 Ky. 847.

Ewing v. Ewing, 81 S.W.2d 860,

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acter of the return as affording an opportunity to sue is material,⁴³ and in other cases temporary returns are considered insufficient only where the various sojourns do not aggregate the statutory period.⁴⁴

Return sufficient to notify plaintiff. In order that a return into the jurisdiction after an absence which has interfered with the running of the statute of limitations may set the statute in motion, defendant cannot come secretly or privately into the jurisdiction for the mere purpose of starting the statute to run,⁴⁵ but he must be able to show that plaintiff either knew of the return so as to have had an opportunity to avail himself of the presence by bringing suit, or that the return or stay was so public or of such length as to amount to constructive notice or knowledge or to raise the presumption that if plaintiff had used ordinary diligence he might have brought his action,⁴⁶ although it has been held that defendant is entitled to have the benefit of all the time he spends in the jurisdiction as long as he does not conceal himself.⁴⁷ The distinction in some of the cases seems to be that if the debtor, residing out of the state when the cause of action accrues, comes into it temporarily and with no intention of remaining, he must show knowledge on the part of the creditor,⁴⁸ but when the coming

is to dwell and reside permanently it is not necessary in order to set the statute in operation that the creditor should have knowledge thereof;⁴⁹ it is enough if he can acquire such knowledge by the exercise of reasonable diligence.⁵⁰ At any rate, returning to the state with a design to lurk in it as a place of concealment is not sufficient to avail the debtor.⁵¹

§ 213. Evasion or Obstruction of Process

Under statutes expressly so providing, the operation of the statute of limitations is suspended when the defendant obstructs, hinders, or prevents the bringing of the action.

By express provision of the statutes in a number of jurisdictions the running of the statute of limitations is suspended when the debtor or defendant obstructs, hinders,⁵² or prevents⁵³ the bringing of the action, as by absconding, removing, or concealing himself, as considered infra § 214, or by any other indirect ways or means, or by improper acts.⁵⁴

§ 214. — Concealment of Person; Obstruction by Removal

Under statutes so providing, the operation of the statute of limitations is suspended by the debtor's absconding, removing, or concealing himself so that no action cannot be commenced.

43. Ky.—Bennett v. Devlin, 17 B. Mon. 353.
37 C.J. p 1008 note 25.

44. Conn.—Clegg v. Bishop, 136 A. 102, 105 Conn. 564.
Okla.—Fairfax Nat. Bank v. Bert, 176 P.2d 216, 197 Okl. 517—Latson v. McCollom, 134 P.2d 130, 192 Okl. 48—Electric Supply Co. v. Garland, 165 P.2d 758, 188 Okl. 21.
37 C.J. p 1009 note 26.

45. N.Y.—*Corpus Juris* quoted in Turner v. American Metal Co., 50 N.Y.S.2d 800, 826, 268 App.Div. 239, appeal dismissed 66 N.E.2d 591, 295 N.Y. 822.
37 C.J. p 1009 note 29.

46. Ky.—Mitchell v. Simms, 177 S.W.2d 3, 236 Ky. 312.
N.Y.—*Corpus Juris* quoted in Turner v. American Metal Co., 50 N.Y.S.2d 800, 826, 268 App.Div. 239, appeal dismissed 66 N.E.2d 591, 295 N.Y. 822—Dougherty v. Seigle, 42 N.Y.S. 2d 646, 181 Misc. 674.

37 C.J. p 1009 note 30.

Visits of nonresident
Action was not barred by statute of limitation, where defendant had become a nonresident prior to running of limitations, notwithstanding he had visited the state at various occasions during the intervening years, in absence of showing that visits were of a regularity or no-

tricity sufficient to bar the tolling of the statute.—Robinson v. Lasky, 57 N.Y.S.2d 587.

Defendant held not entitled to protection of statute
N.Y.—Dougherty v. Seigle, 42 N.Y.S. 2d 646, 181 Misc. 674.

47. Kan.—Baxter v. Krause, 101 P. 467, 79 Kan. 851, 23 L.R.A.N.S. 547.
37 C.J. p 1009 note 31.

48. Me.—Crosby v. Wyatt, 23 Me. 156.
37 C.J. p 1009 note 32.

49. Vt.—Davis v. Field, 56 Vt. 426.
37 C.J. p 1010 note 33.

50. Mich.—Downe v. Gaynor, 118 N.W. 615, 155 Mich. 38.

51. Mass.—White v. Bailey, 3 Mass. 271.

52. W.Va.—Robertson v. Campbell, 186 S.E. 310, 117 W.Va. 576—Cameron v. Cameron, 162 S.E. 173, 111 W.Va. 375.

37 C.J. p 983 note 1.

Matters held to constitute obstruction

Ky.—Exchange Bank v. Thomas, 74 S.W. 1056, 115 Ky. 832, 25 Ky.L. 228, dissenting opinion 75 S.W. 283, 115 Ky. 832, 25 Ky.L. 228.

W.Va.—Robertson v. Campbell, 186 S.E. 310, 117 W.Va. 576.

Matters held not to constitute obstruction

Ky.—Daly v. Power, 59 S.W.2d 248 Ky. 533—McGill's Adm't Phillips, 49 S.W.2d 1025, 243 Ill. 768.

53. Ark.—Burr v. Williams, 20 Ark. 171.
37 C.J. p 983 note 2.

54. Ark.—Reeder v. Cargill, 146 W. 223, 102 Ark. 518.
37 C.J. p 984 note 5.

Improper act

(1) "Improper act" tolling limitation statutes means an act hindering or delaying commencement of all service of process, or some necessary step with relation thereto.—Whedon v. Missouri Pac. R. Co., 42 S.W. 579, 328 Mo. 888, transferred, 33 S.W.2d 179.

(2) The improper act must be in the nature of a fraud that would prevent the commencement of the action.

U.S.—Ball v. Gibbs, C.C.A.Mo., F.2d 958.

Mo.—Sehrabauer v. Schneider B. Graving Product, 25 S.W.2d 224 Mo.App. 304.

37 C.J. p 984 note 5 (b).

(3) Failure to do what defendant is under no legal obligation to do is not an improper act.—Ball v. Gibbs, *supra*.

In the state the mere inaction of the creditor should have knowledge thereof;⁵⁰ it is enough if he can acquire such knowledge by the exercise of reasonable diligence.⁵¹ At any rate, returning to the state with a design to lurk in it as a place of concealment is not sufficient to avail the debtor.⁵²

Tex.—App. 12 fused.

37 C.J. p 983 note 2.

Tex.—C.J. p 983 note 2.

N.Y.—Audits § 875, 188.

Assumption

The fact of

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tion statute tell

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Beckery v.

Coast Corp

U.S.—

town, W.

820, 32 L.

C.J. p 983 note 2.

Cal.—S.

1131, 9 C.

Tex.—Civ.

Co.—W.

Co., 33 S.

C.J. p 983 note 2.

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TITLE 18.- UNITED STATES CODE - CRIMES & CRIMINAL PROCEDURE

§ 84. Misprision of felony.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some Judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both. (June 25, 1948, ch. 645, 62 Stat. 684.)

§ 13. Laws of States adopted for areas within Federal jurisdiction.

Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment. (June 25, 1948, ch. 645, 62 Stat. 686.)

§ 113. Assaults within maritime and territorial jurisdiction.

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:

(a) Assault with intent to commit murder or rape, by imprisonment for not more than twenty years.

(b) Assault with intent to commit any felony, except murder or rape, by fine of not more than \$3,000 or imprisonment for not more than ten years, or both.

(c) Assault with a dangerous weapon, with intent to do bodily harm, and without just cause or excuse, by fine of not more than \$1,000 or imprisonment for not more than five years, or both.

(d) Assault by striking, beating, or wounding, by fine of not more than \$500 or imprisonment for not more than six months, or both.

(e) Simple assault, by fine of not more than \$300 or imprisonment for not more than three months, or both. (June 25, 1948, ch. 645, 62 Stat. 689.)

§ 114. Maiming within maritime and territorial jurisdiction.

Whoever, within the special maritime and territorial jurisdiction of the United States, and with intent to maim or disfigure cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance—

Shall be fined not more than \$1,000 or imprisoned not more than seven years, or both. (June 25, 1948, ch. 645, 62 Stat. 689; May 24, 1949, ch. 139, § 3, 63 Stat. 90.)

§ 201. Bribery of public officials and witnesses.

(a) For the purpose of this section:

"public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

"person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been nominated or appointed; and been officially informed that he will be so nominated.

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(1) to influence any official act; or
(2) to influence such public official or person who has been selected to be a public official to

commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

TITLE 18. - UNITED STATES CODE - CRIMES & CRIMINAL PROCEDURE

§ 201. continued:

or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

Shall be fined not more than \$20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

Shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title. (Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1119, and amended Pub. L. 91-405, title II, § 204(d)(1), Sept. 22, 1970, 84 Stat. 853.)

§ 211. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, and if death results, they shall be subject to imprisonment for any term of years or for life. (June 25, 1948, ch. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, title I, § 103(a), 82 Stat. 75.)

§ 212. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be sub-

ject to imprisonment for any term of years or for life. (June 25, 1948, ch. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, title I, § 103(b), 82 Stat. 75.)

§ 215. Federally protected activities.

(a) (1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

TITLE 18.- UNITED STATES CODE - CRIMES & CRIMINAL PROCEDURE

§ 245. continued:

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating or in enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in

subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State. (Added Pub. L. 90-284, title I, § 101(a), Apr. 11, 1968, 82 Stat. 73.)

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§ 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of

such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. (June 25, 1948, ch. 645, 62 Stat. 701.)

§ 1111. Attempt to commit murder or manslaughter.

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States, attempts to commit murder or manslaughter, shall be fined not more than \$1,000 or imprisoned not more than three years, or both. (June 25, 1948, ch. 645, 62 Stat. 756.)

§ 1510. Obstruction of criminal investigations.

(a) Whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator; or

Whoever injures any person in his person or property on account of the giving by such person or by any other person of any such information to any criminal investigator—

Shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) As used in this section, the term "criminal investigator" means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations or prosecutions for violations of the criminal laws of the United States. (Added Pub. L. 90-123, § 1(a), Nov. 3, 1967, 81 Stat. 362.)

§ 1511. Obstruction of State or local law enforcement.

(a) It shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business if—

(1) one or more of such persons does any act to effect the object of such a conspiracy;

(2) one or more of such persons is an official or employee, elected, appointed, or otherwise, of such State or political subdivision; and

(3) one or more of such persons conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the

Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization, except as compensation for actual expenses incurred by him in the conduct of such activity.

(d) Whoever violates this section shall be punished by a fine of not more than \$20,000 or imprisonment for not more than five years, or both. (Added Pub. L. 91-452, title VIII, § 802(a), Oct. 15, 1970, 84 Stat. 936.)

§ 1702. Obstruction of correspondence.

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, 62 Stat. 778.)

§ 1703. Delay or destruction of mail or newspapers.

(a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined not more than \$500 or imprisoned not more than five years, or both.

(b) Whoever, being a Postal Service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

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§ 1703. continued:

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined not more than \$100 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 778; May 24, 1949, ch. 139, § 37, 63 Stat. 95; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(16), 84 Stat. 778.)

§ 1709. Theft of mail matter by officer or employee.

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, 62 Stat. 780; Aug. 12, 1970, Pub. L. 91-375, § 6(j)(19)(A), 84 Stat. 778.)

Chapter 25. RACKETEERING

Sec.

1951. Interference with commerce by threats or violence.
1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.
1953. Interstate transportation of wagering paraphernalia.
1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.
1955. Prohibition of illegal gambling businesses.

§ 1951. Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

§ 1951. continued:

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101—115, 151—166 of Title 29 or sections 151—188 of Title 45. (June 25, 1948, ch. 645, 62 Stat. 793.)

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or controlled substances (as defined in section 102(6) of the Controlled Substances Act) or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving mail or shall be conducted under the supervision of the Secretary of the Treasury. (Added Pub. L. 87-728, § 1(a), Sept. 13, 1961, 75 Stat. 498, and amended Pub. L. 89-68, July 7, 1965, 79 Stat. 212; Pub. L. 91-513, title II, § 701(d)(2), Oct. 27, 1970, 84 Stat. 1282.)

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§ 1954. continued:

§ 1953. Interstate transportation of wagering paraphernalia.

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined not more than \$10,000 or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia. (Added Pub. L. 87-218, § 1, Sept. 13, 1961, 75 Stat. 492.)

§ 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan.

Whoever being—

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or

(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or

(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or

(4) a person who, or an officer, counsel, agent, or employee of an organization which, provides benefit plan services to such plan

receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined not more than \$10,000 or imprisoned not more than three years, or both: *Provided*, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension benefit plan" means any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act, as amended, and (b) "employee organization" and "administrator" as defined respectively in sections 3(3) and 5(b) (1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended. (Added Pub. L. 87-420, § 17(e), Mar. 20, 1962, 76 Stat. 42, and amended Pub. L. 91-452, title II, § 225, Oct. 15, 1970, 84 Stat. 930.)

§ 1955. Prohibition of illegal gambling businesses.

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$20,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, book making, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the revision or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and

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§ 1955. continued:

forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity. (Added Pub. L. 91-452, title VIII, § 803(a), Oct. 15, 1970, 84 Stat. 937.)

Chapter 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.	
1961.	Definitions.
1962. ¹	Prohibited racketeering activities.
1963.	Criminal penalties.
1964.	Civil remedies.
1965.	Venue and process.
1966.	Expedition of actions.
1967.	Evidence.
1968.	Civil investigative demand.

AMENDMENT

1970.—Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

§ 1961. Definitions.

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from Interstate shipment) if the act indictable under section 659 is felonious, section 604 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1,03 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to wire tapping), section 1963 (relating to

§ 1961. continued:

interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2421-24 (relating to white slave traffic). (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

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§ 1961. continued:

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department of agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941.)

§ 1962. Prohibited activities.

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections

§ 1962 continued:

(a), (b), or (c) of this section. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1963, 1964 of this title.

§ 1963. Criminal penalties.

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

§ 1964. Civil remedies.

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to, ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of enterprise as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or

ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1965 of this title.

§ 1965. Venue and process.

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpensas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpensa shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1966. Expedition of actions.

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in

his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action. The judge so designated shall assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause action to be expedited in every way. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1967. Evidence.

In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 1968. Civil investigative demand.

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpensa duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpensa duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by—

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or

general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be *prima facie* proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) (1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material

so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of—

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly—

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district

TITLE 18.- UNITED STATES CODE - CRIMES & CRIMINAL PROCEDURE

§ 1968. continued:

within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand, the time allowed for compliance with the demand to abide or in part as so directed proposed and ordered by the court shall not exceed the probability of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(d) At any time during which any petition is in the custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial circuit within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(e) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. (Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 944.)

§ 2232. Destruction or removal of property to prevent seizure.

Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than \$2,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 802.)

§ 2511. Interception and disclosure of wire or oral communications prohibited.

(1) Except as otherwise specifically provided in this chapter any person who—
(a) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;
(b) willfully uses, endeavors to use, or procures any other person to use or endeavor to use any

electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) (a) (i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided*, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) It shall not be unlawful under this chapter for an officer, employee, or agent of any communication common carrier to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, pursuant to this chapter, is authorized to intercept a wire or oral communication.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United

TITLE 18. - UNITED STATES CODE - CRIMES & CRIMINAL PROCEDURE

§ 2511. continued:

States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power. (Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 213, and amended Pub. L. 91-358, title II, § 211(a), July 29, 1970, 84 Stat. 654.)

TITLE 22. - UNITED STATES CODE - FOREIGN RELATIONS & INTERCOURSE

§ 1007. Separation for cause.

(a) The Secretary may, under such regulations as he may prescribe, separate from the Service any Foreign Service officer, Reserve officer, or staff officer or employee, on account of the unsatisfactory performance of his duties, or for such other cause as will promote the efficiency of the Service, with reasons given in writing, but no such officer or employee shall be so separated until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties, or other cause for separation, shall have been established at such hearing, unless he shall have waived in writing his right to a hearing. The provisions of this section shall not apply to Foreign Service officers of class 8 or any other officer or employee of the

Service who is in a probationary status or whose appointment is limited or temporary, except that separation is by reason of misconduct.

(b) Any participant in the Foreign Service Retirement and Disability System separated under the provisions of subsection (a) of this section shall receive a refund of the contributions made to the Foreign Service Retirement and Disability Fund, with interest, as provided in section 1086(a) of this title except that in lieu of such refund such officer may (except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States) if he has at least five years of service credit toward retirement under this System, excluding military or naval service that is credited in accordance with the provisions of section 1091 or 1092(a) of this title, elect to leave his contributions in the Fund and receive an annuity, computed as prescribed in section 1076 of this title commencing at the age of sixty years. In the event that an officer who has elected under the provisions of this section to receive a deferred annuity dies before reaching the age of sixty, his contributions to the Fund, with interest, shall be paid in accordance with the provisions of sections 1076 and 1116 of this title.

(c) Any officer or employee of the Service separated under the provisions of subsection (a) of this section who is not a participant in the Foreign Service Retirement and Disability System shall be entitled only to such benefits as shall accrue to him under the retirement system in which he is a participant.

(d) Any payments made in accordance with the provisions of subsection (b) of this section shall be made out of the Foreign Service Retirement and Disability Fund. (Aug. 13, 1946, ch. 957, title V, § 637, 60 Stat. 1016; July 28, 1956, ch. 770, § 6, 70 Stat. 704; Sept. 8, 1960, Pub. L. 86-723, § 25(a), 74 Stat. 836.)

§ 1199. Liability for neglect of duty or for malfeasance generally; action on bond; penalty.

Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his office, he shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages occasioned thereby; and for all such damages, he and his sureties upon his official bond shall be responsible thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his office. If any consul neglects or omits to perform seasonably the duties imposed upon him by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than \$10,000 and not less than \$1,000. (R. S. §§ 1735, 1736; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

Chapter 23. PROTECTION OF CITIZENS ABROAD

Sec.

1731. Protection to naturalized citizens abroad.
1732. Release of citizens imprisoned by foreign governments.

§ 1731. Protection to naturalized citizens abroad.

All naturalized citizens of the United States while in foreign countries are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens. (R. S. § 2000.)

DERIVATION

Act July 27, 1868, ch. 249, § 2, 15 Stat. 224.

§ 1732. Release of citizens imprisoned by foreign governments.

When it is made known to the President that any citizen of the United States has been unjustly

deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress. (R. S. § 2001.)

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§ 2401. Time for commencing action against United States.

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. (June 25, 1948, ch. 646, 62 Stat. 971; Apr. 25, 1949, ch. 92 § 1, 63 Stat. 62; Sept. 8, 1959, Pub. L. 86-238, § 1(3), 73 Stat. 472; July 18, 1966, Pub. L. 89-506, § 7, 80 Stat. 307.)

LEGISLATIVE HISTORY

Reviser's Note. Based on title 28, U. S. C., 1940 ed., §§ 41 (20), 942 (Mar. 3, 1911, ch. 231, § 24, part 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1210 (c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, § 1420, 60 Stat. 845).

Section consolidates provision in section 41 (20) of title 28, U. S. C., 1940 ed., as to time limitation for bringing actions against the United States under section 1346 (a) of this title, with section 942 of said title 28.

Words "or within one year after the date of enactment of this Act whichever is later", in section 942 of title 28, U. S. C., 1940 ed., were omitted as excused.

Provisions of section 41 (20) of title 28, U. S. C., 1940 ed., relating to jurisdiction of district courts and trial by the court of actions against the United States are the basis of sections 1346 (a) and 2402 of this title.

Words in subsec. (a) of this revised section, "person under legal disability or beyond the seas at the time the claim accrues" were substituted for "claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, and persons beyond the seas" (See reviser's note under section 2401 of this title.)

Words in section 41 (20) of title 28, U. S. C., 1940 ed., "nor shall any of the said disabilities operate cumulatively" were omitted. (See reviser's note under section 2401 of this title.)

A provision in section 41 (20) of title 28, U. S. C., 1940 ed., that disabilities other than those specifically mentioned should not prevent any action from being barred was omitted as superfluous.

Section (b) of the revised section borrows and restates said section 942 of title 28, U. S. C., 1940 ed., without change of substance.

Changes were made in phrasing.

SENATE REVISION AMENDMENT

For Senate amendment to this section, see 66th Congress Senate Report No. 1859, page 10, note 9.

AMENDMENT

1966. Subsec. (b). Pub. L. 89-506 struck out provisions dealing with a tort claim of \$2,000 or under as a special category of tort claim requiring preliminary administrative action and substituted provisions requiring presentation of all tort claims to the appropriate Federal agency for settling within two years after the date of the claim, or within three years after the date of the claim if the agency to which the claim is presented determines, taking into account of all facts, that two years after the claim accrues.

1969. Subsec. (b). Pub. L. 86-238 substituted "\$2,500" for "\$1,000" in two instances.

1970. Subsec. (b). Act Apr. 25, 1949, the time for the tort action on bringing tort actions from 1 year to 2 years.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89-506, set out as a note under section 2672 of this title.

CROSS REFERENCES

Settlement of claims incident to activities of the Coast Guard, see Title 14, Coast Guard.

SECTION 2401 APPLICABLE TO OTHER SECTIONS

This section is referred to in section 2671 of this title; title 49, section 1540.

§ 2402. Jury trial in actions against United States.

Any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346 (a) (1) shall, at the request of either party to such action, be tried by the court with a jury. (June 25, 1948, ch. 646, 62 Stat. 971; July 30, 1954, ch. 648, § 2 (a), 68 Stat. 589.)

LEGISLATIVE HISTORY

Reviser's Note. Based on title 28, U. S. C., 1940 ed., §§ 41 (20), 931 (a) (Mar. 3, 1911, ch. 231, § 24, part 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310 (c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, § 410 (a), 60 Stat. 843).

Section consolidates non-jury provisions of sections 41 (20) and 931 (a) of title 28, U. S. C., 1940 ed. For other provisions of said section 931 (a) relating to tort claims, see Distribution Table.

Word "actions" was substituted for "suits", in view of Rule 2 of the Federal Rules of Civil Procedure.

Provisions of title 28, U. S. C., 1940 ed., § 41 (20) relating to jurisdiction of district courts and time for bringing actions against the United States are the basis of sections 1346 and 2401 of this title.

AMENDMENTS

1954. Act July 30, 1954, permitted a jury trial at the request of either party in actions under section 1346 (a) (1) of this title.

§ 2403. Intervention by United States; constitutional question.

In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all rules of law, of a court, as to evidence, to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality. (June 25, 1948, ch. 646, 62 Stat. 971.)

Reviser's Note. Based on title 28, U. S. C., 1940 ed., §§ 41 (20), 931 (a) (Mar. 3, 1911, ch. 231, § 24, part 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, § 1310 (c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, § 1025 (c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§ 1122 (c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, § 410 (a), 60 Stat. 843.)

serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

PART VI.—MISCELLANEOUS

Sec. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

Sec. 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY

CROSS REFERENCE

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of this title.

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R. S. § 1979.)

DERIVATION

Act Apr. 20, 1871, ch. 22, § 1, 17 Stat. 13.

§ 1984. Same; review of proceedings.

All cases arising under the provisions of this Act in the Courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court. (Mar. 1, 1875, ch. 114, § 5, 18 Stat. 337.)

REFERENCES IN TEXT

This act, referred to in the text, has reference to act Mar. 1, 1875. Sections 1 and 2 of said act Mar. 1, 1875 were not classified to this Code. Sections 3 and 4 of said act Mar. 1, 1875, formerly classified to sections 44 and 45 of Title 8, were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and are now covered by sections 243 and 3231 of Title 18, Crimes and Criminal Procedure. Section 5 of act Mar. 1, 1875 is classified to this section. (R. S. § 1980.)

§ 1985. Conspiracy to interfere with civil rights.

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and

truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentation, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentation, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. § 1980.)

DERIVATION

Acts July 31, 1861, ch. 33, 12 Stat. 284; Apr. 20, 1871, ch. 22, § 2, 17 Stat. 13.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title; title 28 section 1343.

APPENDIX

LIST OF PARTS OF THE RECORD CONTAINED IN APPENDIX

<u>DOCKET ENTRY NO:</u>		<u>APPENDIX PAGES:</u>
--	Docket Entries	-2-
-4- Endorse- ment)	Decision dated October 6, 1975 dismissing Complaint as time barred.	-4-
-7-	Memorandum of Law in Opposition to Defendants' Motion to Dismiss, dated July 9, 1975	-5-
-8-	Notice of Appeal of Appellant, dated December 1, 1975	-9-
-12-	Appellant's <u>Affidavit</u> dated September 29, 1976, Exhibits "A", "B", "C" & "D" and Memorandum of Law in Support of Plaintiff's Motion for Relief, dated September 30, 1976	-15-
-14-	Decision dated January 27, 1977 denying Plaintiff's Motion for Relief	-32-

DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM	DOCKET YR. NUMBER
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PLAINTIFFS

DEFENDANTS

METZNER, J.

HERBERT LEO PALM

THE VETERANS ADMINISTRATION OF
THE UNITED STATES OF AMERICA
UNITED STATES OF AMERICA

4/5

CAUSE

recover monies in negligence suit in failing to
treat medically pltf. properly under the Federal
Tort Claims Act, Title 28 USC 1346(b)

sls

ATTORNEYS

Ehrich Reisch
291 Bdwy.
NYC 10007 227-8550

US Attorney - Civil Division
1 St. Andrews Plaza
NYC 10007

pro-se address
See page 2

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS		DATE FEB 14 1975	FILING FEES PAID RECEIPT NUMBER 46955 1/13/76 64070 5- 1/13/76 74038 5-	CD NUMBER	STATISTICAL CARDS CARD DATE MAILED JS5 X JS6 10-75
UNITED STATES DISTRICT COURT DOCKET					

DC-111 (Rev. 1/75)

METZNER, J.

DATE	NR	PROCEEDINGS
02-14-75	1	Filed complaint and issues summons.
03-04-75	2	Filed summons and Marshals return - served: The Atty. Gen'l Dept. of Justice, Wash., DC - cert. mail #161602 on 2-20-75
05-01-75	3	Filed stip. and order that deft's time to answer is ext. to 5-21-75 -- Metzner, J.
05-16-75	4	Filed defts notice of motion to dismiss for failure to state a claim. - ret. 5-28-75
05-16-75	5	Filed defts memorandum in support of above motion.
06-02-75	6	Filed stip. and order adj. deft's motion to dismiss to 6-25-75. -- Metzner, J.
07-10-75	7	Filed memorandum of law in opposition to defts motion to dismiss.
10-06-75	8	Filed memo endorsed on document #4: The motion to dismiss the complaint as time barred is granted for reasons stated herein. So ordered. - Metzner, J. m/n
01-13-76	8	Filed notice of appeal by plaintiff to the USCA for the 2nd Circuit from order dismissing the complaint. m/n
01-28-76	9	Filed xxxxxx notice that the record on appeal has been certified and transmitted to the USCA for the 2nd Circuit.
09-23-76	10	Filed true copy of USCA order dismissing appeal. m/n
09-30-76	11	Filed true copy of USCA order that motion of Appellant for leave to withdraw appeal without prejudice to renewal after the determination of a Rule 60(b) motion is granted. m/n
11-29-76	12	Filed pltfs: (Pro Se motion) Affidavit, memorandum of law and notice of motion (with exhibits) to vacate dismissal (motion dated 09-30-76) on submission no ret. date. papers include correspondence from pltf. to pro-se Clerk and from pro-se Clerk to pltf.
12-08-76	13	Filed letter by Cahill Gordon & Reindel, Esqs., 80 Pine St., NYC 10005 to Clerk dated 12-06-76... that law firm never has and does not now represent Mr. Palm in any litigation in any jurisdiction.
01-28-77	14	Filed opinion # 45558 - Pltf's motion # 12 is denied Metzner, J. m/n to pltf. m/n. address: Herbert Leo Palm 7500 Karlsruhe 41 Niddastrasse 19a W. Germany
4-5-77	15	Filed pltffs Notice of Appeal to the USCA for reinstatement of his civil appeal which denied his motion pursuant to Rule 60(b)(2). Copy mailed to the U.S. Attorney, 1 St. Andrews Plaza, New York, N.Y. 10007.

APR 19 1977
RAYMOND E. BURGESS
CLERKJ. L.
in re Herbert Leo Palm

Robert Leo Palm v. United States
75 Civ. 748

This motion to dismiss the complaint as time
barred is granted.

The action has been instituted by an alleged
discharged veteran of the armed forces of the United
States. It is predicated on alleged malpractice committed
by agents of the defendant at a Veterans Administration
Hospital in 1965. It is clear that plaintiff knew at
the time or shortly thereafter that he might have a
claim. Since this action was not instituted until
1975, it is time barred by the two-year statute of
limitations under the Federal Tort Claims Act, 28 U.S.C.
§ 2401(b).

There is no showing of mental incompetency
within the two-year period to avoid this result.

So ordered.

Dated: New York, N. Y.
October 6, 1975

Charles W. McElroy
U. S. D. J.

MICROFILM

OCT 06 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
HERBERT LEO PALM, :
Plaintiff, :
-against- :
UNITED STATES OF AMERICA et. al. :
Defendants. :
-----x

MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANTS
MOTION TO DISMISS THE
COMPLAINT

Preliminary Statement

This Memorandum is submitted in Opposition to defendants Motions pursuant to Rule 12 (b) of the Federal Rule of Civil Procedure for an order dismissing the complaint on the ground that the Court has no jurisdiction over the subject matter of the action and that the plaintiff has failed to state a claim upon which relief can be granted.

POINT ONE

The Statute of Limitations as prescribed in the Federal Tort Claims Act 28 U.S.C. §2401 (b) should be tolled.

In the case of Osbourne v. United States, 164 Fed. 2d., 767, 768, the Court ruled that where the plaintiff had brought a suit to recover for injuries suffered through the negligence of the United States and where it appeared that at the time that the

action was to commence that the plaintiff was a prisoner of the Japanese and, therefore, was in no position and did not have access to the United States Courts to institute his suit timely, and that the Statute of Limitations would, therefore, be tolled. The same principle was applied in the United States. v. Wiley 78 United States 508, 513 and 514; the principle that a Statute would be tolled in time of War originated with the leading case of Hanger v. Abbot 73 U.S. 532, 14 L. Ed 939 where the Court held that during the Civil War the Statute of Limitations would be tolled.

It is conceded, of course, that at the time the plaintiff's action accrued in 1965 that the United States was not at War and that the plaintiff, HERBERT LEO PALM was not an subsequently did not become a prisoner of any foreign power which was at war with the United States.

However, it is respectfully submitted that the plaintiff was a "prisoner" of his own mental delusion that he was being persecuted by various agencies of the United States of America and that in fact he was under such an incapacity that he left the United States to reside in Germany because he was fearful of his safety in the United States.

This fear has continued to the present date.

Section 242 of Corpus Juris Secundum pages 268, 269 and 270 deals with the broad topic of Insanity, therein states that "mental incapacity" prevents the running of any Statute of Limitations and cites therein the case of Williams v. Williams CCA, Ill, 61 Fed. 2d., 257, certiorari denied 53 Supreme Court 404, 288 United States 612.

While it is essential, in order to postpone the running of the statute, that the proof of insanity be clear, it is not necessary that there should have been an adjudication of the fact.

It is respectfully submitted that the plaintiff driven by, what may very well have been an unfounded fear of being poisoned or put to death by various agencies of the United States government nevertheless, that he in fact did believe such circumstances to exist has exhibited such a mental delusion which clearly reflects his mental disability to fully and completely understand and appreciate his rights, and certainly while the plaintiff has labored under that delusion and in fact even now labors under the delusion that he is in fear of his life, and, therefore, will not return to the United States unless the United States provides him sufficient security, could not be held responsible to comply with Article 28 U.S.C. Section 4601 (b). In fact, where many cases speak of the ability to discover, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged malpractice, as in Quinton v. United States 304 Fed. 2d., 234, 236 (5th Circuit 1962), it is respectfully submitted that the plaintiff was not capable of exercising "reasonable diligence" since he was under mental incapacity.

POINT TWO

The Motion to Dismiss the Complaint should be denied.

Dated: July 9, 1975

Respectfully submitted,

ERICH REISCH

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
HERBERT LEO PALM,

: Plaintiff,

-v-

: NOTICE OF APPEAL

UNITED STATES OF AMERICA et al.,

: 75 Civ 748

: Defendants.

-----X

Notice is hereby given that HERBERT LEO PALM, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the decision of this court dated October 6, 1975, dismissing this complaint as time barred.

Plaintiff has not received the Court's judgment or order showing the date on which this action was entered.

A copy of plaintiff's attorney's Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint dated July 9, 1975 alleging mental incapacity on the part of plaintiff was only received by plaintiff on October 28, 1975 from his Attorney, Erich Reisch, after extraordinary pressure had been put on him after he failed to respond to many previous requests for said copy.

Plaintiff's attorney never furnished plaintiff a copy of the Court's decision dated October 6, 1975, even though he was repeatedly requested to do so promptly on receipt from the Court.

With letters dated September 19, 1975, October 7, 1975 and October 24, 1975, plaintiff requested the Office of the Clerk of this Court to furnish the copies which plaintiff's attorney # failed to supply him and he received same, including the Court's decision dated October 6, 1975, on November 5, 1975.

BEST COPY AVAILABLE

-1-

Appendix Page -9-

Plaintiff's attorney, Erich Reisch, acted against plaintiff's specific instructions by pleading mental incapacity. He was not authorized to do so under any condition. This is why he withheld his Memorandum of Law dated July 9, 1975 from plaintiff and left plaintiff in the belief that he submitted the real facts regarding plaintiff's legal disability as per 28 USC § 2401 (a), which, no doubt, also applies to 28 USC § 2401 (b), to file his tort claim within the two-year statute of limitations of 28 USC § 2401 (b) and not before August 2, 1974, when this tort claim was actually filed with the Veterans Administration.

Thus plaintiff was prevented by his attorney from personally submitting the real facts and evidence to the Court before its decision of October 6, 1975 was rendered.

Plaintiff had furnished his attorney, Erich Reisch, the details of his legal disability in ample time prior to the filing date of his Memorandum of Law dated July 9, 1975. Plaintiff also furnished him close to two hundred individual medical records covering plaintiff's serious physical illnesses from May 18, 1965 to recent times, but his attorney failed to submit these facts and evidence to the Court.

Plaintiff was meanwhile forced to relieve his attorney, Erich Reisch, of his representation for this and other serious causes.

The real reasons for plaintiff's legal disability to file the tort claim with the Veterans Administration within the two-year statute of limitations, which ended on or about November 4, 1967, were in short as follows:

1. Plaintiff had in May and June, 1965 been criminally mal-practiced on by three New York City urologists for the purpose of causing him a so-called "natural death". This was done for and on behalf of the New York crime syndicate and the New York City Police Department. Plaintiff has been physically persecuted ever since that time in the United States and beyond the seas. - For details kindly see this Court's File 75 Civ 315.

2. Plaintiff was kept physically ill by his persecutors ever since, and seriously ill most of the time.
3. Plaintiff was illegally kidnaped by the Paris Police on June 12, 1967, kept in a cell for one night, and was then illegally detained by this police department in Sainte Anne (Mental) Hospital in Paris, France, from June 13, 1967 to January 3, 1968 with the cooperation of the United States Embassy in Paris, France. The statute of limitations for this tort claim ended during this period of illegal deprivation of plaintiff's liberty on or about November 4, 1967.
4. The Social Security Administration, having examined plaintiff's medical records, determined with award dated April 21, 1975 that plaintiff's disability in accordance with the Social Security laws began on August 11, 1967 and that this disability was continuous~~xx~~ until the present time.
While plaintiff disagrees with the date of August 11, 1967, as it should be May 18, 1965, and has requested the Social Security Administration for re-examination of his claim, this disability date of August 11, 1967 was within the statute of limitations pertaining to the tort claim against the Veterans Administration, ending on or about November 4, 1967.
5. Plaintiff received one written death threat and numerous oral ones.
6. Plaintiff's father, the late Ludwig Palm, leg was fractured a few days after the urologists had completed their criminal malpractices on the plaintiff and had made him fatally ill in June, 1965. His father was then and until his death on June 22, 1968 a stroke patient and vegetable at Riverdale Nursing Home, Bronx, New York, and was completely in the hands of plaintiff's persecutors. Plaintiff and the patient's wife/were never able to find out from the staff and management there how this fracture took place, and there can be no question that it was arranged on purpose.

7. Plaintiff's aged mother's, Mrs. Lina Palm, hip was broken when being run into by a teenage girl, who came specially running across the street, on the totally empty sidewalk on upper Broadway, New York, N.Y., end of December, 1967, a few days before plaintiff's return from France on January 3, 1968. This was obviously an arranged accident, as the girl who caused it ran away without assisting plaintiff's mother. His mother had passed this spot every evening on her way back from the nursing home.
8. Plaintiff's many efforts to obtain a lawyer for his representation were unsuccessful until early 1975 when Attorney Erich Reisch accepted the case.
9. Plaintiff was involuntarily beyond the seas from January 22, 1966 until January 3, 1968 and from April 13, 1971 to the present.
10. Refusal of various United States Consuls contacted in Europe to help plaintiff and to transmit plaintiff's case to the United States Government in Washington, D.C.
11. Refusal of the Food and Drug Administration, of the U.S. Department of Agriculture, of the New York City Health Department, of the New York City Consumer Affairs Department, of the New York City Building Department, of the New York State Department of Agriculture and Markets and of the New York State Department of Health, all repeatedly advised by plaintiff of criminal violations of the water, food, meat, etc. adulteration prohibitions perpetrated for the specific purpose to make plaintiff ill and cause his death due to specific allergies caused him by the urological malpractices, to enforce these laws.
12. Refusal of two agents of the Federal Bureau of Investigation contacted in West Berlin, Germany, to help plaintiff and to transmit the criminal information he gave them to the Department of Justice or the Federal Bureau of Investigation in Washington, D.C.

13. Refusal of all other officials of the United States Government and its subdivisions contacted to help plaintiff and to enforce the laws.
14. Plaintiff's impossibility to obtain proper medical treatment for the illnesses caused by the urological malpractices in the United States and great difficulty in obtaining such proper treatment beyond the seas.

Since plaintiff was all along under threat of death and under duress and was at a crucial time illegally deprived of his liberty, aside from being seriously ill, preventing him to file the tort claim with the Veterans Administration until August 2, 1974 without risking his life and possibly that of his parents, the legal disability provisions of 28 USC §2401(a) apply to this case.

The U.S. District Court's decision is, therefore, not doing justice to this case, even though it is conceded that the Court could, due to failure of plaintiff's attorney to submit these real facts and available evidence, not rule otherwise.

To bar this complaint due to the statute of limitations, would make the United States of America the beneficiary of an extremely criminal situation, and this is contra bonas mores.

It must also be pointed out that the Veterans Administration, Office of General Counsel, Washington, D.C. 20420, in its letter of administrative denial of the tort claim dated August 15, 1974 failed to state in its explanation of the law that it considered a judicial complaint barred due to the two-year statute of limitations. Nor did it indicate that it would ask for dismissal on these grounds if a judicial complaint were filed by plaintiff. It, in fact, suggested to the plaintiff to file such complaint with the United States District Court.

A claimant has the right to expect from his government that legal information furnished in an administrative claim denial is accurate and complete, and that the legal position taken in such letter of denial is binding upon the government agency concerned in all future proceedings.

Had this been done, plaintiff would have been enabled to deal with the statute of limitation question in his original complaint.

Plaintiff has been unable to obtain the services of a new attorney to represent him in this appeal.

Plaintiff also could not find anyone in Frankfurt, Germany, nor does he know of anyone in Europe, who has the expertise to arrange the printed record and other formalities required by the Rules of Appellate Procedure, and plaintiff himself has no such expertise either, nor is he in possession of all records contained in the court's file.

Therefore, plaintiff being beyond the seas and being under legal disability in accordance with 28 USC § 2401 (a) must request the Court to hold this appeal in abeyance until such time that either a qualified new attorney accepts handling this appeal or until the plaintiff is accorded the requested security arrangements for his person by the United States Government, so that he may be enabled to return to the United States and there obtain the necessary assistance for preparing the printed record and other required formalities.

Dated: Frankfurt/Main, Germany
December 1, 1975

Respectfully submitted,

Address: HERIBERT LEO PALM
Jahnpostlagernd
6 Frankfurt/Main 11
Germany

-Plaintiff-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

HERBERT LEO PALM,

Plaintiff,

-against-

AFFIDAVIT

75 Civil 748

THE VETERANS ADMINISTRATION OF THE
UNITED STATES OF AMERICA, and the
UNITED STATES OF AMERICA.

Defendants.

x

CONSULATE OF THE)
UNITED STATES OF AMERICA)
CITY OF FRANKFURT) SS.:
LAND HESSE)
FEDERAL REPUBLIC OF GERMANY)

THE PLAINTIFF, BEING DULY SWORN, DEPOSES AND SAYS:

1. I was born on the 18th day of September 1918, in the Federal Republic of Germany, and I am a naturalized citizen of the United States of America, through the legal process of Naturalization on the 22nd day of January 1943.

2. I am a veteran of the Second World War, having been inducted into the United States Army on the 27th day of June 1941 and honorably discharged on the 23rd day of October 1945.

3. I commenced the above stated action, through my attorney Erich Reisch, on or about the 13th day of February 1975 and upon a Motion by the Defendants, said action was dismissed as time-barred, the order dismissing the action having been entered on the 6th day of October 1975.

4. Subsequent to the 25th day of February 1976, I received a letter from the Veterans Administration of the United States, one of the Defendants of the action herein, informing me that I was adjudged totally disabled as of the 18th day of May 1965. A copy of said letter is annexed as Exhibit "A".

5. On or about the 23rd day of September 1976, I received from the Defendant, Veterans Administration of the United States, copies of two Medical Reports dated the 6th day of March 1975 and directed to the said Defendant. A copy of said Reports are annexed as Exhibits "B" and "C".

6. On the 24th day of September 1974, I was first informed of the fact that my physical medical ailments were of such magnitude to require constant medical treatment and hence of a totally debilitating nature. This said medical information was provided by Dr. med. Gernot Hilkenbach in a medical report dated the 24th day of September 1974. A copy of said medical report is annexed hereto as Exhibit "D".

7. To this day, I have no information as to whether the Defendant Veterans Administration judged my total disability to be a physical or mental incapacitating nature or a combination thereof.

8. I have never been informed by a competent medical authority of the fact that I suffered mental disorder until receipt of the documents heretobefore referred to as Exhibits "B" and "C".

9. I strenuously contest the accuracy of the mental ailment diagnosis contained within the aforesaid medical reports and, without prejudice, deny that I am now or ever have been mentally ill.

10. I emphatically state that the competent medical information enabling me to relate my medically organic and functional insufficiencies to the omissions and negligent treatment by the Defendants was first learned on or about September 21, 1974.

11. I confirm that on or about May 19, 1974, I informed the Defendant Veterans Administration of the sum and substance of the claim herein filed but reiterate that the medical basis of my lay opinion was not confirmed until September 24, 1974.

12. I have discharged the attorney, Erich Reisch, who originally filed a Notice of Appearance in the above entitled action, and for the purposes of this motion I shall initially proceed pro-se, with counsel expected to file a Notice of Appearance in the very near future.

Robert Leo Pahn

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Date: FEB 25 1976

In Reply
Refer to:
V 38 52 38
310-297A

VETERANS ADMINISTRATION
CENTER
WISSAHICKON AVE. AND MANHEIM ST.
P.O. BOX 8079
PHILADELPHIA, PA. 19101



Mr. Herbert L. Palm
6 Frankfurt Main 11
Bahnpostlagernd, Germany 413

Recd 3/4/76

We are glad to furnish information about your National Service Life Insurance and about your disability insurance benefits.

As you know, your insurance provides for benefits, including monthly payments, in the event of total disability. For our purposes, total disability is defined as any impairment of mind or body which continuously makes it impossible for the insured to perform any substantially gainful occupation.

You were found to be totally disabled from May 18, 1965, as claimed, and premiums of both your basic insurance policy and the Total Disability Income Provision have been waived from June 1, 1965. The check received in the amount of \$1,277.05 represented the premiums paid at \$9.30 per month for the period June 1, 1965 through February 28, 1976.

Information about the benefits awarded under your basic policy will be found under the "Waiver of Premiums" section of the enclosed policy.

Monthly payments of \$50.00 were awarded from April 21, 1974. As indicated in Section (D) of the attached Total Disability Income Provision, payments may begin on the first day of the 7th consecutive month of total disability but no earlier than 6 months prior to the date of receipt of the claim and evidence establishing total disability. Your informal claim was received on October 24, 1974 and monthly payments were awarded beginning 6 months prior to that date.

M. R. Melzer

M. R. MELZER
Chief, Insurance Division

Enclosure



"To care for him who shall have borne the battle, and for his widow, and his orphan." — ABRAHAM LINCOLN

REPORT OF TREATMENT IN HOSPITAL

INSTRUCTIONS: This form should be executed by superintendent of the hospital or other appropriate official.

HISTORY (Condition causing disability)

1. DATE AND MODE OF ONSET
Patient was admitted to Bellevue Psychiatric Hospital on 10-23-65 from Jacobi Hospital. History of quitting job in May of that year with multiple somatic delusions. Felt he was being destroyed by "poisoned water and physicians. On admission here he was a 46 yr old W/M, suspicious, guarded, hostile. Complained of bladder problems and anemia because of slow poisonings but wouldn't talk about it because "it's criminal not medical case." Would only speak to the D.A."

2. SYMPTOMS AT ONSET AS DESCRIBED BY PATIENT

PRIOR HOSPITALIZATION (As shown by records of hospital preparing report)

4A. NAME AND ADDRESS OF HOSPITAL	4B. DATE ENTERED HOSPITAL	4C. DATE OF DISCHARGE
----------------------------------	---------------------------	-----------------------

PRIOR TREATMENT BY ATTENDING PHYSICIAN (As shown by records of hospital preparing report)

5A. NAME AND ADDRESS OF PHYSICIAN	5B. PERIOD OF TREATMENT AND DIAGNOSIS
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TREATMENT IN HOSPITAL PREPARING REPORT

6A. DATE(S) OF ENTRY	6B. DATE(S) OF DISCHARGE
----------------------	--------------------------

10-23-65

11-4-65

6C. LIST SYMPTOMS AS FOUND WHEN FIRST TREATED
M.S.: Patient was cooperative, evasive and sometimes irrelevant. Patient complained of prostate condition. Sensorium was clear. Insight and judgement impaired. Patient was sent to Urology Consult. Patient refused any sort of treatment or exam there. It was felt that he probably had a congested prostate but all we could do was treat him symptomatically.

CONDITION AT PRESENT OR AT DATE OF DISCHARGE

7A. DATE OF LAST EXAMINATION

7B. SUBJECTIVE SYMPTOMS (Describe fully)

This report is a privileged and confidential communication.

7C. OBJECTIVE FINDINGS (Describe fully)

Patient was placed on Thorazine, Chlorhydrate and Darvon while here. He was discharged in his own custody 11-4-65, to attend the Mental Hygiene Clinic.

7D. DIAGNOSIS (Major conditions causing disability with main findings and, if available, results of any special studies, X-ray, E.K.G., Laboratory Reports, etc.)

Paranoid Reaction

8. PROGNOSIS-HOW MUCH FURTHER HOSPITALIZATION WILL BE REQUIRED?

9. NAME OF HOSPITAL Bellevue Psychiatric Hospital	10. ADDRESS OF HOSPITAL 30 Street & 1st Avenue New York, N. Y. 10016
--	--

11. DATE OF REPORT
March 6, 1975

12. SIGNATURE AND TITLE OF PERSON PREPARING REPORT

Marvin M. Smartt, Assistant Director (mg)

107714
THE PRESBYTERIAN HOSPITAL

in the City of New York
at
COLUMBIA-PRESBYTERIAN MEDICAL CENTER

622 WEST 168TH STREET
NEW YORK, N.Y. 10032

March 6, 1975

Veterans Administration Center
Wissahickon Ave. & Manheim St.
P.O. Box 8079
Philadelphia, Pa.

Ref. # 310-297A
Ins. File # FV 38 52 38

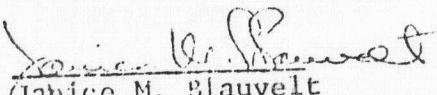
RE: Herbert Palm
645 W. 160th St.
New York, N.Y.
Unit # 125 96 68

Gentlemen:

The above named patient has asked us to send you medical information.

The patient was evaluated in our Psychiatry Clinic in January of 1968 and was diagnosed as having chronic paranoid schizophrenia. The patient was followed by the psychiatric nurse in clinic in 1968 and was given Haldol, 2 mgs., b.i.d. and Artane, 2 mgs., b.i.d. He was not seen in clinic after February 8, 1968.

Sincerely yours,


Janice M. Blauvelt
Supervisor
Medical Information

By direction of
Joseph E. Snyder, M.D.
Assistant Vice President

WT/ba

MEDICAL REPORT
(General)

Identifying Information (To be com- pleted by Re- questing Office)	PATIENT'S NAME Herbert L. Palm	DATE OF BIRTH 18 Sep 18	SOCIAL SECURITY NO. 070-14-7876
	WAGE EARNER'S NAME (if different from patient)	NAME AND ADDRESS OF REQUESTING OFFICE Amerikanisches Generalkonsulat 7000 Stuttgart 1 Urbanstr. 7 Federal Benefits Unit	
	NAME OF DOCTOR Dr. med. Gernot Hilkenbach		

NOTICE TO PHYSICIAN:

PLEASE INCLUDE SUFFICIENT DETAILS OF HISTORY, PHYSICAL AND DIAGNOSTIC FINDINGS, CLINICAL COURSE, THERAPY AND RESPONSE TO ENABLE A REVIEWING PHYSICIAN TO MAKE AN INDEPENDENT DETERMINATION AS TO THE SEVERITY AND DURATION OF THE IMPAIRMENT.

I. HISTORY: So far as I am informed, patient has been in examination and treatment since 1965 by many doctors (practitioners and specialists) in the U.S.A. and Europe because of prostate gland disease, inflammatory changes of the urinary tract, diarrhea, hypotension, coronary insufficiency, stenocardia, bronchitis, myalgia, allergic inflammation of eye lids, myocardial weakness, rheumatism, dermatitis allergica, rhinitis sicca, otitis externa, haemorrhoids, astigmatism, presbyopia, gastro-enteritis, chronic tonsilitis, pancreas insufficiency, spastic colitis, spastic obstipation, abscessed atheroma, osteochondrosis and spondylosis of the spinal column, insomnia, liver and kidney disease

Since December 11, 1972, he has been in examination and treatment at my office with

Hepatopathia,
Extrasystole,
Myocardial weakness,
Pyelitis, Nephropathia
Allergic Diathese,
Insomnia,
Vegetative dystonia,
Chronic tonsilitis,
Spinal column degeneration,
Diarrhea,
Hypotension,
Hyperhidrosis,
Anemia
Intestinal candida infection

DATE YOU FIRST EXAMINED PATIENT	FREQUENCY OF VISITS	DATE OF MOST RECENT EXAM- INATION
December 11, 1972	17 visits	September 23, 1974

II. PHYSICAL FINDINGS: Please show all pertinent findings (with dates).

HEIGHT	WEIGHT
171 cm	74.5 Kilos

Dec. 11, 1972 Cor 72/min., regular, RR 140/80, lungs and abdomen regular; chronic tonsillitis; rectal examination regular.

Dec. 26, 1972 RR 135/85, Cor 72/min., blocked vertebral zones in the neck and thoracal column.

Jan. 18, 1973 Cor 64/min., RR 115/75.

Jan. 29, 1973 RR 105/65.

Nov. 28, 1973 RR 120/70

Sep. 17, 1974 RR 150/95, Cor 58/min., extrasystole; lungs regular. Abdomen: Meteorismus.

Sep. 23, 1974 RR 145/95 (under Strophantin)

III. LABORATORY AND SPECIAL STUDIES: Give Results of all Pertinent Studies With Dates. (In the case of ECG's please attach a copy of the tracing or a detailed description thereof.)

Dec. 14, 1972: ESR 11/28 (not normal);

Blood: Hemogl. 84%, Ery 4.26 Mil., Color Index 0.98 (normal 1.0)
Leuko 9100,
Thymol: 3.3 MLE (o.k.)
SGOT 21 m.U. (normal to 15)
SGPT 23 m.U. (normal to 15)
Urea 37 mg% (o.k.)
Kreatinin 0.53 mg% (o.k.)
Cholesterol 215 mg% (o.k.)
Whole lipoids 680 mg% (o.k.)
Alkaline phosphatase 2.7 mmole (o.k.)
Glucose 60 mg% (o.k.)

Urine: Normal; no blood; no glucose; no albumen

ECG: Normal (Photocopy attached)

Dec. 18, 1972: Stool: no blood.

Dec. 21, 1972: X-ray examination: old m. Scheuermann, Spondylosis deformans, old Tbc of the upper lung parts, rest of a pleuritis in the lower part of right lung; free passage of the oesophagus. Heart suspect of insufficiency.

Dec. 26, 1972 ECG: Supraventricular extrasystoles. (Photocopy attached)

Nov. 28, 1973 Quick 100% (normal)

Urine normal

ECG: Extrasystoles (Photocopy attached)

Nov. 30, 1973 ESR 5/11 (normal)

SGOT 14 m.U. (normal)

SGPT 23 m.U. (normal to 15 m.U.)

Gamma-GT 16 m.U. (normal)

Sept. 17, 1974 ESR 10/20 (not normal)

Blood glucose 80 mg% (normal)

Blood examination and urine examination:

See attached copy of report of

Diagnostisches Zentrum Berlin

1 Berlin 31, Joachim-Friedrich Strasse 16

Sept. 23, 1974 ECG: Supraventricular extrasystoles. (Photocopy attached)

Sept. 24, 1974 Stool: Intestinal candida infection.

Report of Diagnostisches Zentrum Berlin
is attached.

Dr. Gern
Facharzt für Innere Medizin
1 Berlin 31
Jelch 1853 17.93

IV. DIAGNOSES:

1. Chronic hepatitis.
2. Extrasystolia, coronary insufficiency, hypotension, myocardial weakness
3. Allergic rhinitis, chron. tonsilitis, chron. diarrhea (allergic?)
4. Spondylosis deformans of the spinal column, Morbus Sheuermann
5. Old inactive tuberculosis of the upper parts of the lungs
6. Anemia
7. Pyelitis, Nephropathia, chronic prostatitis
8. Insomnia
9. Hyperhidrosis
11. Intestinal candida infection
10. Severe vegetative dystonia

V. TREATMENT and RESPONSE

Penicillin, corticosteroids, strphanthin, B-vitamins, anti-allergic substances, hypnotics (Doriden forte tablets), Bactisubtil (biologic intestinal therapeuticum), liver protection infusions, Tromacaps (Mfgr. Dr. Madaus & Co.)

Mr. Palm is suffering from many organic and functional insufficiencies. He is and has been unable to work and earn money. He needs steady medical treatment and care.

Dr. Gernot Hilkenbach
Facharzt für Innere Medizin
1 Berlin 31, Hildegardestr. 31
Telefon 030 317 93

Dr. Gernot Hilkenbach
Facharzt für Innere Medizin
1 Berlin 31, Hildegardestr. 31
Telefon 030 317 93
Jelc 8531793

REPORTING PHYSICIAN'S NAME AND ADDRESS
(Type or Print)

Dr. med. Gernot Hilkenbach
1 Berlin 31, Germany
Hildegardestrasse 31

SIGNATURE


TELEPHONE NUMBER
8531793

TITLE
Dr. med.,
Internal Medicine

DATE
September 24, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BERBERT LEO PALM,

Plaintiff

- v -

75 Civil 748 (CMM)

UNITED STATES OF AMERICA et. al. :

Defendants.

MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
MOTION FOR RELIEF

Preliminary Statement

This memorandum of law is submitted in support of Plaintiff's motion pursuant to Rule 60(b)2 of the Federal Rules of Civil Procedure for an Order relieving the Plaintiff from a final order filed on the 6th of October 1975.

Prior Proceedings

Plaintiff, a naturalized citizen and honorably discharged Veteran of the United States Armed Forces, commenced a Tort action in this Court (75 Civil 748) on or about the 13th of February 1975 against the United States of America and the Veterans Administration of the United States of America, wherein it was alleged that agents acting on behalf of the Defendants committed medical malpractice against the Plaintiff and omissions of negligent magnitude on or about September 1, 1965 and on or about October 23, 1965. In addition, it was alleged the Defendants conspired to cause the illegal detention of the Plaintiff

BEST COPY AVAILABLE

in the psychiatric ward of the Bellevue Hospital in the City and State of New York. A negligent aspect of the complaint was additionally based on the Defendants' committed omissions in refusing to provide medical care and thus aggravating pre-existing severe illnesses of which the Defendants allegedly had knowledge. Plaintiff sought redress contending that his medical illnesses and disabilities were severely aggravated due to the negligent acts of the Defendants thus requiring the Plaintiff to undergo extensive medical and hospital treatment. Plaintiff sought redress for pain, suffering, loss of earnings and humiliation caused by the negligence of the Defendants.

The Defendants, represented by the U. S. Attorney for the S. D. of New York, moved the Court to dismiss the complaint as time-barred in accord with the Statute of Limitations prescribed by 28 U.S.C. 2401 (b) under the Federal Tort Claims Act. On the 6th of October 1975, the Motion was granted. The Plaintiff filed a Notice of Appeal and thereafter moved to dismiss the appeal without prejudice to renewal so as to enable an application before the District Court in accord with Rule 60(b)(2) of the Federal Rules of Civil Procedure.

The Newly Discovered Evidence
Effectively Tolls The Statute of Limitations

Plaintiff has discovered evidence that although in existence prior to the final order of the Court (entered 6 October 1975) and which was apparently known to exist by the Defendants at appropriate times during the pendency of the action, was totally unknown to the Plaintiff until a considerable time after the final order dismissing the action was entered. The newly discovered evidence consists of two medical reports showing mental incapacity of the plaintiff and further a newly enacted finding by the Defendant, Veterans

Administration, to the effect that the Plaintiff was totally disabled from a time prior to the dates the Defendants were alleged to have committed the negligent acts.

In prior proceedings, the Defendants had claimed, that the Plaintiff's claim had accrued by October 1965 and hence was time-barred by U.S.C. 2401(b). The Plaintiff's inability to make a meaningful counter-argument was obviously due to a lack of evidence. During the pendency to the action, the Defendants advanced the following argument:

" It is clear from the pleadings that he knew of the acts constituting the alleged malpractice when they were committed in September and October of 1965, as well as the injuries which allegedly resulted therefrom. See Ashley v. United States, supra at 492. Indeed, the complaint is devoid of any suggestion that the alleged acts and resulting injuries were discovered subsequent to the date of commission. Rather, plaintiff admits that his current medical illnesses are the same as those that existed at the time of the alleged acts, and that the issue herein is aggravation and non-treatment of those injuries. Accordingly, even were plaintiff now to contend that he was not then aware of the extent of the resulting injury, his claim must still fail. The running of a statute of limitations does not await determination of the full extent of injury. It begins to run as soon as some damage is discernible at the time of the negligent act, even though the ultimate damage is unknown. Ciccarone v. United States 486 F.2d 253 (3d Cir. 1973); Fortis v. United States, 483 F.2d 670 (4th Cir. 1973); Quinton v. United States, supra. "

The pleadings indicate that the Plaintiff asked for medical treatment because obviously he believed it was necessary and the requested treatment and care was not performed because expert medical opinion thought it unnecessary.

Discovery by the Plaintiff that his legal rights were invaded at the moment medical treatment was denied could not have been possible unless the Plaintiff had substantial medical knowledge or in-futuro perception. There are numerous cases in point which show that it is customary for patients to seek treatment from Doctors in whom they have confidence. Hence the "continuous treatment rule" which tolls the time limitation statute. (See: Accardi v. U.S., D.C.N.Y. 1973 356 F.Supp. 218).

There is very little anyone can do when a doctor refuses treatment and certainly at the moment of refusal the medical expertise does not become the patient's responsibility. If the symptoms continue to exist, the patient would probably seek fresh medical assistance and this was exactly the course followed by the Plaintiff. At the point in time when the symptoms were controlled and the degree of aggravation of ailments fully diagnosed, the Plaintiff made the nexus between act and disease. Thusly, three events must transpire before the statute of time limitations begins to run:

1. Performance of the Negligent Act.
2. Discovery of an Injury.
3. Discovery of the relationship between 1. and 2.

(Kuhne v. U.S., D.C. Tenn. 1967, 267 F.Supp.649; Kington v. U.S., D.C. Tenn. 1967 265 F.Supp.699; affirmed 396 F.2d9, certiorari denied 89 S.Ct. 396, 393 U.S. 960, 21L Ed 2d 373).

The Plaintiff states that he was first able to authoritatively relate the negligent acts of the Defendants to the injuries suffered and intensification of existing injuries upon receipt of a medical report dated September 24, 1974. Prior to that date and within a few weeks after the alleged negligent acts were performed, there was a

diagnosis which is a *prima-facie* indication that the Plaintiff was suffering from a mental disorder. As a matter of fact that medical report indicates that the Plaintiff was suffering from "multiple somatic delusions". (Exhibit "B" of Plaintiff's Affidavit dated September 29, 1976, filed herein). Subsequently, in January 1968, the Plaintiff was examined and found as having "chronic paranoid schizophrenia". (Exhibit "C" of Plaintiff's Affidavit dated September 29, 1976, filed herein).

Although the Plaintiff questions the accuracy of the above-stated medical reports, their existence must be accepted as a *prima-facie* showing of the inability of Plaintiff to exercise reasonable diligence in an effort to discover the nexus between trauma and negligent acts. Clearly, in the absence of a conclusive showing that the Plaintiff knew or should have known of the alleged negligence and results thereto more than two years before he filed claim against the Defendants, the claim is not barred as a matter of law by the statute of limitations. (Wulner v. U.S., D.C. Mo. 1975, 393 F. Supp. 749; Hammond v. U.S., D.C.N.Y. 1975, 388 F.Supp. 928).

There are numerous contradictions in the medical reports and facts that are puzzling, at minimum. At the time the Plaintiff was seeking hospitalization and medical care, his illnesses were considered "somatic delusions". A "somatic personality" is a "physical illness personality" (Page 35, *The Human Mind*, Karl A. Menninger, M.D., published 1957 by Alfred A. Knopf, New York). The contradiction is that the Plaintiff was found by the Defendants to be totally disabled prior to the finding of delusionary illnesses. The medical evidence upon which the Plaintiff believes a physical disability diagnosis was made indicates numerous illnesses with long prior histories. For the purposes of the instant application, acceptance of the medical reports concerning mental illness on their *prima-facie* worth, tolls the statute of limitations.

However, it is possible that the diagnosis finding the Plaintiff a "chronic paranoid schizoid" is incorrect and especially in view of the fact that it can now be shown that the "somatic delusions" diagnosis in 1965 was inaccurate at least in part as concerns the actual physical ailments which are now proved to have existed. The writer doubts that principles of estoppel or laches are applicable to the situations above described, but, arguendo, if they were, the following conditions would exist:

1. If the Defendant, Veterans Administration, found the Plaintiff to be totally disabled due to a mental impairment, said Defendant would be estopped from claiming that the Plaintiff could have exercised reasonable diligence in discovering that his legal rights were invaded.
2. If the Defendant, Veterans Administration, found the Plaintiff to be totally disabled due to physical and mental impairment, said Defendant may still be estopped as in 1. above.

The Defendant, Veterans Administration, must have accepted, on face value, the medical diagnosis as presented the Plaintiff having received no notification to the contrary. This being the case, no further legal argument should be necessary to toll the statute. However, the glaring conflicts require study.

Diagnosis of physical medical disorders is usually more accurate and easier to perceive than diagnosis of mental disorders. Apparently, the non-treatment of the Plaintiff due to a diagnosis of strong somatic delusions may have been wrong in that later evidence indicates the presence of illness of long history. A strong psychiatric argument could be made that refusal to treat existing illnesses followed by detention for a suspected mental condition could bring about a state of mind of neurotic obsession or neurotic compulsion or the part of the Plaintiff to seek out aid for his symptomatic conditions with total exclusion of all other activities.

It is medically believed that mental patients need first to have their physical health put in order prior to the receipt of meaningful mental treatment (Basic Psychiatry, Dr. Edward A. Strecker, published by Random House, New York, 1952).

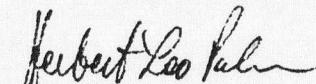
Preoccupation as a result of an obsession or a compulsion may also be an argument to toll the statute but because of the strong *prima-facie* showing as heretofore described, there is no need to carry that theme further.

The writer believes that the Plaintiff has made a sufficient *prima-facie* showing to require an inquiry, at minimum, into the issues of fact that may arise.

Conclusion

It is respectfully prayed that this Court enter an order relieving the Plaintiff of its former order dismissing the action herein, together with such other relief as is just and proper.

Respectfully submitted,



HERBERT LEO PALM
(Plaintiff Pro-Se.)

Mailing Address Niddastrasse 19A
for Service: 7500 Karlsruhe 41
 Germany

Dated: 30 September 1976

Case

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED BY
STEAMER MAIL
MARCH 7, 1977

HERBERT LIO PALM,

Plaintiff, *# 45358*

-against-

THE VETERANS ADMINISTRATION OF
THE UNITED STATES OF AMERICA,
and the UNITED STATES OF AMERICA,

Pro Se
75 Civ. 746
(CM1)

Defendants. :

----- X
METZNER, D. J.:

This is a motion pursuant to Fed. R. Civ. P. 60(b)(2) for relief from an order of this court entered on October 6, 1975 which had dismissed the action.

Plaintiff, proceeding pro se, submitted the original motion papers on October 4, 1976. They were returned to him by the pro se office for failure to include an affidavit of service. For the purpose of this motion, plaintiff's papers will be deemed to have been filed with the court on the date they were originally received, and thus this motion is not time barred.

Plaintiff claims that certain evidence obtained by him subsequent to the October 6, 1975 order of this court establishes a prima facie case of mental incompetency sufficient to toll the two-year statute of limitations.

"Insanity, such as constitutes a legal disability in most states, does not toll the statute of limitations under the Federal Tort Claims Act." Casino v. United States, 552 F.2d 1599, 142 (10th Cir. 1975); Accardi v. United States, 455 F.2d 1259 (5th Cir. 1970).

Plaintiff's motion is therefore denied.

So ordered.

Dated: New York, N. Y.
January 27, 1977

Charles J. Metzger
U. S. D. J.

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Administrator's control, the application and required proof may be filed by the beneficiary within 6 months after the date of death of the Insured. In such cases, except for total disability which is due to one of the specific causes listed in (A)(2), (A)(3) and (A)(4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the Insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof. Any disability income payments due the Insured and not paid during his lifetime will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the Insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the Insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the Insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time

provision there must be paid (1) the difference between the premiums already paid for this provision and those that would have been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 2½ percent a year compounded annually on insurance issued under Section 723(b) of Title 38, United States Code, and on other National Service Life Insurance at the rate of 3 percent a year compounded annually. To this extent the provision entitled "Change of Plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy. If the policy to which this provision is attached is a participating policy, it may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such benefit. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of this policy), and the payment thereafter of the same amount on each succeeding monthly premium due date of this policy. Except as otherwise provided herein, premiums for this provision are payable to the Insured's 60th birthday or until the end of the premium paying period of this policy. If earlier, if any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium.

Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.



V A FORM 29-1667b
FEB. 1968

Administrator of Veterans Affairs

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 315
Judge Charles M. Metzner

Herbert L. Palm, Plaintiff

v.

United States of America and
United States Attorney General and
United States Department of Justice and
United States Secretary of State and
United States Department of State and
United States Secretary of Health,
Education and Welfare and
United States Department of Health,
Education and Welfare and
Administrator of the Veterans Administration and
Veterans Administration and
United States Secretary of Agriculture and
United States Department of Agriculture,
Defendants

} Application for
Writs of Mandamus
in accordance with
United States Code
Title 28 Section
1361 and for Court
Orders.

The plaintiff, Herbert L. Palm, petitions the court as follows:

1. To issue writs of mandamus in accordance with United States Code Title 28, Section 1361, or to issue Court Orders, to compel the United States Attorney General and/or United States Department of Justice, the United States Secretary of State and/or the United States Department of State, the United States Secretary of Health, Education and Welfare and/or the United States Department of Health, Education and Welfare, the Administrator of the Veterans Administration and/or the Veterans Administration, and the United States Secretary of Agriculture and/or the United States Department of Agriculture, to investigate and prosecute all the violations of the Federal criminal statutes described in plaintiff's Affidavit dated September 9, 1974 (which is annexed hereto as Exhibit A), and also all other violations of the Federal criminal statutes which will become apparent in the course of such investigation. This investigation and prosecution should preferably be carried out centrally by the United States Attorney General and/or the United States Department of Justice, because all violations are part of one large conspiracy.

2. To turn this case over to a Federal Grand Jury or Special Federal Grand Jury, regardless of the actions of the United States Attorney General, defendant, because racketeering and racketeer influenced and corrupt organizations are involved, and to order the plaintiff to appear before such Federal Grand Jury or Special Federal Grand Jury after fool-proof security arrangements are made for the plaintiff's person.

3. To order the United States Secretary of State, defendant, to furnish the plaintiff the proper consular protection to which plaintiff is entitled as an American citizen while plaintiff remains outside the United States of America.

4. To order the United States Attorney General or the Government of the United States of America, defendants, to make fool-proof security arrangements for the plaintiff's person as a government witness with particular emphasis on unadulterated water, unadulterated food and unadulterated medicines, as well as to provide the plaintiff with proper legitimate medical care, if and when he should ask for same, all in the United States of America, so that plaintiff may be enabled to return to the United States of America as a government witness.

5. To appoint legal counsel for the plaintiff, so that plaintiff's legal rights can be properly protected, because plaintiff was unable to obtain legal representation from any of the Attorneys at ~~■~~ Law contacted direct, nor from the Legal Aid Society, nor from the American Civil Liberties~~■~~ Union, nor from the Legal Referral Service of the Association of the Bar of the City of New York and New York County Lawyers' Association, all of New York, New York.

This application is based on the following further facts:

(1) Plaintiff transmitted with registered air mail letter dated February 19, 1974 to defendant United States Attorney General William B. Saxbe, Washington, District of Columbia (a copy of which is hereto annexed as Exhibit B) plaintiff's partial statement of February 6, 1974 (a copy of which is hereto annexed as Exhibit C), containing plaintiff's allegations of many of the violations of Federal statutes now contained in a more detailed form in the annexed Affidavit (Exhibit A). Plaintiff indicated in this letter (Exhibit B) that he would disclose more violations of Federal statutes in due course, and requested the defendant

United States Attorney General to immediately appoint a special prosecutor, initiate a Grand Jury investigation and advise the plaintiff of the security arrangements to be made for his person.

(2) The defendant United States Department of Justice, Civil Rights Division, Reference : JSP:CDH:mkk:rdc DJ 144-0, advised the plaintiff with letter of March 25, 1974 (a copy of which is hereto annexed as Exhibit D) that this defendant was unable to assist plaintiff, claiming that the circumstances described by plaintiff do not indicate a violation of ^a Federal statute which defendant United States Department of Justice has the responsibility of enforcing.

(3) Plaintiff with letter of March 31, 1974 (a copy of which is here to annexed as Exhibit E) advised the defendant United States Department of Justice, Civil Right Division, Washington, District of Columbia 20530, that he cannot accept this defendant's decision not to prosecute plaintiff's charges, and plaintiff posed a good many legal questions to this defendant and made it clear to this defendant that there were , among others, violations of United States Code Title 18 Section 4 - Misprision of felony- by Federal off. ~~st~~ ials, that plaintiff had further information on interstate racket operations connected with this case, etc.

(4) Plaintiff did not receive the expected direct detailed reply from the defendant United States Department of Justice, to which plaintiff is entitled.

(5) The defendant United States Department of Justice finally replied with letter of May 1, 1974 (a copy of which is hereto annexed as Exhibit F) to an inquiry from the Honorable Bella S. Abzug, House of Representatives, claiming that this defendant's decision of March 25, 1974 remained in force, since plaintiff had not furnished further conclusive evidence which would change this decision. This defendant ~~Mr~~ did not indicate what information this defendant required to change the defendant's decision, nor did this defendant interrogate the plaintiff. Plaintiff had made it clear from the beginning that he had plenty of information on Federal criminal statutes violations, but he had expected that he be interrogated in depth, and still expects this, because plaintiff does not have the expertise and secretarial help necessary to compose a book of evidence which may run into many hundreds of pages, where-

as this defendant is required by law to conduct a serious investigation and prosecution of such serious and responsible allegations.

(6) The defendant United States Department of Justice apparently also failed to disseminate the allegations and information furnished by the plaintiff to those United States Government Departments whose responsibility it is in this defendant's opinion to enforce the violations of the Federal statutes which plaintiff had brought to the attention of this defendant. The defendant United States Department of Justice apparently also failed to transmit plaintiff's allegations and information to the New York County District Attorney for investigation and prosecution of the violations of New York State criminal statutes also contained in plaintiff's partial statement of February 6, 1974 (Exhibit C), among them at least one murder but possibly two murders, all of which is the duty of the defendant United States Department of Justice under the law.

(7) The defendant United States Department of Justice apparently also failed to request the defendant United States Secretary of State to furnish the plaintiff with the consular protection to which he is entitled as a United States citizen, while plaintiff remains outside the United States of America.

(8) All this indicates that the defendant United States Department of Justice failed to perform the duty owed to the plaintiff and to the American people under United States law, and is engaged in a cover-up.

(9) Plaintiff transmitted with registered air mail letter dated May 19, 1974 to the defendant United States Secretary of State Dr. Henry Kissinger (a copy of which is hereto annexed as Exhibit G) plaintiff's partial statement of February 6, 1974 (Exhibit C), and requested him to prosecute all State Department personnel involved in plaintiff's criminal persecution for malfeasance, misfeasance, nonfeasance, obstruction of justice, etc., to immediately obtain the appointment of a special prosecutor, to initiate a Grand Jury investigation, to advise the plaintiff of the security arrangements to be made for his person, and to provide the consular protection plaintiff is entitled to while outside the United States of America.

(10) Plaintiff received no direct reply to this letter from the defendant United States Department of State.

(11) For the defendant, Assistant Secretary of State Linwood Holton finally replied with letter of August 1, 1974 (a copy of which is here-to annexed as Exhibit H) to an inquiry from the Honorable Bella S. Abzug, House of Representatives:

"Except for Mr. Palm's letter, we have been unable to find any record regarding Mr. Palm and the charges he makes, and are, therefore, unable to respond further to his requests."

This would indicate that plaintiff's partial statement of February 6, 1974 (Exhibit B) was defrauded either by the postal service or within the United States Department of State, defendant.

(12) Plaintiff requested the office of the Honorable Bella S. Abzug, House of Representatives, on August 12, 1974 by telephone to mail a photostatic copy of plaintiff's partial statement of February 6, 1974 (Exhibit C) to the defendant care of Assistant Secretary of State Linwood Holton, United States Department of State.

(13) Plaintiff transmitted with air mail letter dated August 13, 1974 (a copy of which is hereto annexed as Exhibit I) to Assistant Secretary of State Linwood Holton for defendant an additional complete set of all correspondence had with the defendant United States Department of State, including plaintiff's letter of July 9, 1974 to the American Consul General in London, England, (a copy of which is hereto annexed as Exhibit J), requesting consular protection. This matter was handled in bad faith by the American Consul Egan, American Embassy, London, England, on behalf of defendant, and plaintiff has asked the defendant to include Consul Egan with those to be prosecuted.

(14) Plaintiff transmitted with air mail letter dated September 2, 1974 to Assistant Secretary of State Linwood Holton for defendant United States Department of State(a copy of which is hereto annexed as Exhibit K) one photocopy of letter of August 20, 1974 to plaintiff from the United States Department of the Army, Office of the Judge Advocate General, Washington, District of Columbia 20310, Reference DAJA-IA (a copy of which is hereto annexed as Exhibit L), informing plaintiff that his correspondence with the Secretary of Defense and with the Secretary of the Army regarding plaintiff's complaints con-

cerning the activities of the Civilian Government of West Berlin and the United States Mission (Military Government), Berlin, was referred to the defendant United States Department of State. Plaintiff requested defendant United States Department of State in this letter (Exhibit K) to centralize the investigation of these complaints with the complaints which plaintiff had filed earlier direct with the defendant United States Department of State.

(15) Plaintiff has not received any further advice from the defendant United States Department of State.

(16) Plaintiff transmitted with registered air mail letter dated May 19, 1974 to the defendant United States Secretary of Health, Education and Welfare Caspar W. Weinberger (a copy of which is hereto annexed as Exhibit M) plaintiff's partial statement of February 6, 1974 (Exhibit C), and requested him to prosecute the individuals named in plaintiff's partial statement of February 6, 1974 (Exhibit C), to immediately obtain the appointment of a special prosecutor, to initiate a Grand Jury investigation and to advise the plaintiff ~~XXXXXXXX~~ of the security arrangements to be made for his person, and to also have the United States Secretary of State obtain consular protection for the ~~XXXXXXXX~~ plaintiff while he is outside the United States of America.

(17) Plaintiff received no direct reply to this letter from the defendant United States Department of Health, Education and Welfare.

(18) For the defendant, Mr. Martin J. Frankel, Director, Executive Secretariat, Public Health Service, United States Department of Health, Education and Welfare, Rockville, Maryland 20852 finally replied with letter of August 6, 1974 (a copy of which is hereto annexed as Exhibit N) to an inquiry from the Honorable Bella S. Abzug, House of Representatives, that malpractice investigations are not within the purview of the Department of Health, Education and Welfare, and suggested that plaintiff should file the charges with the New York State Board of Medical Examiners or the Medical Society of the County of New York.

(19) Plaintiff advised Mr. Martin J. Frankel, Director, Executive Secretariat, Public Health Service, United States Department of Health, Education and Welfare, Rockville, Maryland 20852, ^{for this} defendant, with air mail letter of August 16, 1974 (a copy of which is hereto annexed

as Exhibit O) that this is indeed a case for the defendant United States Department of Health, Education and Welfare to prosecute, because the Office of Civil Rights is under its jurisdiction and must prosecute all violations of plaintiff's civil- and constitutional rights, and since, besides, there were violations of federal criminal statutes by officials of the Food and Drug Administration of the United States Department of Health, Education and Welfare. Plaintiff requested Mr. Martin J. Frankel for this defendant to disseminate photostatic copies of plaintiff's file to the following officials of the defendant United States Department of Health, Education and Welfare, for prosecution action:

Director Peter E. Holmes, Office for Civil Rights;
Director Nathan D. Dick, Office of Investigation and Security;
Assistant General Counsel Theodore A. Miles, Civil Rights Division;
Assistant General Counsel Peter B. Hutt, Food and Drug Division;
Assistant General Counsel Sidney Edelman, Public Health Division;
Special Assistant to the Secretary for Health Policy Roger O. Egeberg, MD ;
Assistant Secretary for Health Charles C. Edwards, M.D.;
Director William I. Bauer, M.D., Office of Professional Standards Review;
Commissioner Sherwin Gardner, Food and Drug Administration.

Plaintiff also requested that this case be turned over to the defendant United States Attorney General and to the Federal Bureau of Investigation, or to the United States Attorney for the Southern District of New York for investigation and prosecution in accordance with United States Code Title 28 Section 535, and also to a Special Grand Jury, because racketeer influenced and corrupt organizations are involved in this matter.

Plaintiff has also pointed out to Mr. Martin J. Frankel for defendant Secretary of Health, Education and Welfare that this is a highly organized systematic criminal medical malpractice and chemical poisoning by way of physician induced allergies, equal to what was carried out in the Auschwitz concentration camp, that it is Federal in scope, that the staff and facilities of The Presbyterian Hospital, New York, New York, Columbia University College of Physicians and Surgeons, New York, New York, Mount Sinai Hospital, New York, New York, and Mount Sinai Medical School, New York, New York, all federally subsidized institutions, are involved in this criminal medical malpractice, and that all

this comes under the jurisdiction of the defendant Secretary of Health, Education and Welfare.

(20) Plaintiff has not received any further advice from the defendant United States Department of Health, Education and Welfare.

(21) Plaintiff transmitted with registered air mail letter dated May 19, 1974 to the defendant Mr. Donald E. Johnson, Administrator, Veterans Administration, Washington, District of Columbia 20420, (a copy of which is hereto annexed as Exhibit P), plaintiff's partial statement of February 6, 1974 (Exhibit C), and requested the defendant to prosecute the Veterans Administration personnel named in plaintiff's partial statement of February 6, 1974 (Exhibit C) , except for Dr. Ferber, as well as the personnel of the Kingsbridge Veterans Administration Hospital, Bronx, New York, whose names had to be determined from that hospital's records, all involved in the criminal medical malpractices on the plaintiff. Plaintiff offered in this letter (Exhibit P) to return to the United States of America, if fool-proof security arrangements are made for his person, or to meet with Veterans Administration prosecution officials outside the United States of America to give them the complete details.

(22) For the defendant, the Office of General Counsel, Veterans Administration, Washington, District of Columbia 20420, Reference 021B, replied with letter dated June 26, 1974 (a copy of which is hereto annexed as Exhibit Q) that the material plaintiff had referred to this defendant did not contain information indicating medical malpractice.

(23) Plaintiff with air mail letter of August 2, 1974 to defendant Veterans Administration, Office of General Counsel, Washington, District of Columbia 20420 (a copy of which is hereto annexed as Exhibit R) stated in great detail the ~~XXX~~ criminal medical malpractice performed on the plaintiff by the medical personnel of the defendant Veterans Administration, and mentioned a good number of United States Code violations which the defendant Veterans Administration's personnel had committed.

Plaintiff also requested the defendant Veterans Administration to turn this matter over to the United States Attorney General and the ~~XXXX~~

Federal Bureau of Investigation or to the United States Attorney for the Southern District of New York for investigation and prosecution in accordance with United States Code Title 28 Section 535, and also to a Special Grand Jury, because racketeer influenced and corrupt organizations are involved in this matter.

Plaintiff also requested the defendant Veterans Administration once more to either obtain for him fool-proof security arrangements in the United States of America in accordance with United States Code Title 18 Chapter 223 - Protected Facilities for Housing Government Witnesses, or to have the prosecution officials meet plaintiff outside the United States of America.

(24) For this defendant, Miss Dorothy L. Starbuck, Director, Veterans Benefits Office, Veterans Administration, Washington, District of Columbia 20421, replied with letter of July 30, 1974, Reference 372/212 C 6 506 896 PALM Herbert L. (a copy of which is hereto annexed as Exhibit S) to an inquiry from the Honorable Bella S. Abzug, House of Representatives:

..."that Mr. Palm's Veterans Administration file has been inactive with the last correspondence had with him October 31, 1947..."

(25) Plaintiff telephoned on August 12, 1974 with Mr. William G. Malone, Deputy Assistant General Counsel, Veterans Administration, Washington, District of Columbia 20420, for defendant. Mr. William G. Malone acknowledged receipt of plaintiff's letter of August 2, 1974 (Exhibit R), but said that he had not then read it. He glanced over the letter while plaintiff was on the telephone. Mr. William G. Malone then said that since it seems to be primarily a criminal case, he would after examination of plaintiff's letter of August 2, 1974 (Exhibit R) turn it over to the defendant United States Department of Justice, for investigation and prosecution.

(26) Plaintiff with air mail letter of August 12, 1974 to the defendant Veterans Administration, Office of General Counsel, Washington, District of Columbia 20420 (a copy of which is hereto annexed as Exhibit T) furnished the defendant one photocopy of letter of July 30, 1974 - Reference 372/212 - from Miss Dorothy L. Starbuck, Director, Veterans Benefits Office, Veterans Administration, Washington, District

of Columbia 20421, to the Honorable Bella S. Abzug, House of Representatives (Exhibit S), and one photocopy of letter of September 7, 1965 - Reference 3006-136B5 - to plaintiff from Mr. Felipe Pepe, Chief, Medical Administration Division, Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, for this defendant (a copy of which is hereto annexed as Exhibit ~~EU~~).

Plaintiff pointed out in this letter (Exhibit T) to defendant Veterans Administration, Office of General Counsel, that if there are no files of plaintiff at the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, other than that supplied to Miss Dorothy L. Starbuck, this would mean that the records regarding plaintiff's application for Five Thousand Dollars additional Veterans Administration Life Insurance made early in 1965 (on or about May 4, 1965), as well as the records regarding plaintiff's application for hospital treatment and physical examination and criminal medical malpractices of September 1, 1965 (Exhibit U), were criminally removed from plaintiff's Veterans Administration file, and an immediate investigation by the Federal Bureau of Investigation would be required. Plaintiff also requested that the whereabouts of his application for medical hospitalization or medical treatment of October 23, 1965 at Kingsbridge Veterans Administration Hospital, Bronx, New York, be checked.

(27) The defendant Veterans Administration, Office of General Counsel, Washington, District of Columbia 20400, with letter dated August 15, 1974, Reference 021, ~~XXXXXXXXXXXXXXXXXX~~ (a copy of which is hereto annexed as Exhibit V) advised the plaintiff in response to plaintiff's letter of August 2, 1974 (Exhibit R) that since plaintiff's letters of August 2, 1974 (Exhibit R) and of May 19, 1974 (Exhibit P) indicate violations of certain criminal ~~XXXXXX~~ codes, copies of the letters are being referred to the Department of Justice, also defendant, for any action indicated since the investigation and prosecution of criminal matters is within that Department.

(28) Plaintiff transmitted with registered air mail letter dated May 26, 1974 to defendant United States Secretary of Agriculture Earl L. Butz, Washington, District of Columbia 20250, (a copy of which is hereto annexed as Exhibit W) plaintiff's partial statement of February 6, 1974 (Exhibit C), and requested him to prosecute all United States Department of Agriculture personnel involved in the whitewash of plain-

tiff's justified complaint and in the nonenforcement of the laws covering the criminal adulteration of meat, ~~XXXX~~ fish and poultry for malfeasance, misfeasance, nonfeasance, obstruction of justice, etc. Plaintiff also furnished this defendant in this letter (Exhibit W) the names of the United States Department of Agriculture officials with whom plaintiff had correspondence regarding his complaints and also the dates.

(29) Plaintiff received no direct reply to this letter (Exhibit W) from the defendant United States Department of Agriculture, Washington, District of Columbia 20250.

(30) For the defendant, Mr. John V. Graziano, Director, Office of Investigation, United States Department of Agriculture, Washington, District of Columbia 20250, finally replied with letter of July 5, 1974 (a copy of which is hereto annexed as Exhibit X) to an inquiry from the Honorable Bella S. Abzug, House of Representatives :

..."A member of my staff is researching the complaint~~s~~ since the matters to which Mr. Palm refers are over four years old. We will write you again when we learn the substance of Mr. Palm's complaint..."

(31) Plaintiff furnished the defendant United States Department of Agriculture, Office of Investigation, Washington, District of Columbia 20250, with his letter of July 17, 1974 to the Honorable Bella S. Abzug, House of Representatives, (a copy of which is annexed hereto as Exhibit Y), one photocopy each of the eleven letters to ~~and~~ from the United States Department of Agriculture listed in plaintiff's letter of May 26, 1974 to defendant Secretary of Agriculture Earl L. Butz (Exhibit W), to help speed up this investigation. In this letter (Exhibit Y) plaintiff also furnished the names of the United States Department of Agriculture officials plaintiff had personally seen about his complaints in New York, New York, and the dates of such meetings, as well as further information on the malfeasance, obstruction of justice, conspiracy, etc. committed by the defendant United States Department of Agriculture's officials.

These documents were forwarded to this defendant by the Honorable Bella S. Abzug, House of Representatives.

(32) Plaintiff has not received any further advice from the defendant United States Department of Agriculture.

(33) In support of plaintiff's statement made in paragraphs 81., 82., 83., and 84. of the annexed Affidavit (Exhibit A) there are annexed hereto one photo-copy each of the following postal return receipts, certified by Vice Consul Micaela A. Cella, American Embassy, London, England, on September 5, 1974 to be true and correct copies of the originals:

As Exhibit Z: Addressee: Mr. Ramsey Clark, No. R 767, signed "J. Mendez" on March 5, 1974 - FDR Post Office Station, New York, New York, returned to Henry Bruckner, a pseudonym used by plaintiff ~~XXXXXX~~ on the return receipt only to avoid such postal interception;

As Exhibit AA: Addressee: Mr. Ramsey Clark, Nr. R 959, signed "E. Vetter" on April 1, 1974 - Old Chelsea Post Office Station, New York, New York, returned to R.M. Fischer, a pseudonym used by plaintiff ~~on the return~~ on the return receipt only to avoid such postal interception;

As Exhibit BB: Addressee: Mr. Ramsey Clark, No. LR 6E6, signed "Carl ~~XXXXX~~ Hines", on April 13, 1974 - Old Chelsea Post Office Station, New York, New York, returned to P. Jordan, a pseudonym used by plaintiff on the return receipt only to avoid such postal interception;

As Exhibit CC: Addressee: Mr. Robert Morgenthau, No. 00301, illegible signature, on March 1, 1974 - Riverdale Post Office Station, Bronx, New York, returned to John M. Brewer, a pseudonym used by plaintiff on return receipt only to avoid such postal interception;

As Exhibit DD: Addressee: Mr. William Kunstler, No. 209, illegible signature, on April 16, 1974 (round post office stamp illegible or lacking), returned to P. Jordan, a pseudonym used by plaintiff on return receipt only to avoid such postal interception;

As Exhibit EE: Addressee: Mr. William Kunstler, No. 8340, forged signature "W. Kunstler", on May 28, 1974, Cooper Post Office Station, New York, New York, returned to H.M. Lap, a pseudonym used by plaintiff on return receipt only to avoid such postal interception.

(34) A check of parts of the United States Code revealed that on the basis of annexed Affidavit (Exhibit A), the following violations of Federal statutes took place, most of which are the responsibility of defendant United States Department of Justice to enforce:

Title 18 Section 241 - Conspiracy against rights of citizens;

Affidavit paragraphs: 6. through 58., and 62. through 67., and 69. through 71. and 74., 75., 78. and 80.

Title 18 Section 1510 - Obstruction of criminal investigation;

Affidavit paragraphs: 6. through 58., and 62. through 67., and 69. through 71., and 74., 75. and 78.

Title 18 Section 1511 - Obstruction of State or local law enforcement;

Affidavit paragraphs: 6. through 58., and 62. through 67., and 69. through 71., and 74., 75. and 78.

Title 18 Section 1113 - Attempt to commit murder or manslaughter;

Affidavit paragraphs: 18., 20., 21. and 22.

Title 18 Section 113 - Assault within maritime and territorial jurisdiction;

Affidavit paragraphs: 18., 20., 21. and 22.

Title 18 Section 114 - Maiming within maritime and territorial jurisdiction;

Affidavit paragraphs: 18., 20., 21. and 22.

Title 18 Section 13 - Laws of States adopted for areas within Federal jurisdiction;

- a) Attempted murder;
- b) Aggravated assault with intent to murder;
- c) Maiming;

- d) Torture;
- e) Criminal medical malpractice;
- f) False arrest;
- g) Illegal incarceration in mental hospitals;
- h) Malfeasance, Misfeasance, and Nonfeasance in office;
- i) Threats;
- k) Obstruction of justice;
- l) Conspiracy to all the above;

Affidavit paragraphs: 18., 20., 21., 22., 63., 64., 65., 67., 69., 70., 71., 74., 75. and 78.

Title 22 Section 1199- Foreign Service officers; Liability for neglect of duty or for malfeasance generally; action on bond; penalty;

Affidavit paragraphs: 62. through 65., 67., 71., 74., 75. and 78.

Title 22 Section 1007- Separation for cause - Foreign Service;

Affidavit paragraphs: 62. through 65., 67., 71., 74., 75. and 78.

Title 42 Section 1985- Conspiracy to interfere with Civil Rights:

- (2) Obstruction of justice; intimidating party, witness or juror;
- (3) Depriving persons of rights or privileges;

Affidavit paragraphs: 6. through 58., and 62. through 67., and 69. through 71., and 74., 75., 78. and 89.

Title 18 Section 4- Misprision of felony;

Affidavit paragraphs: 6. through 10., and 12. through 16., and 18. through 20., and 22. through 39., and 41. through 58., and 62. through 67., and 69. through 71.

Title 18 Section 201- Bribery of public officials.

Affidavit paragraphs: 73. in connection with interstate racketeering and 79.

Title 18 Section 245 - Federally protected activities;

Affidavit paragraphs: 6. through 58., and 62. through 67., and 69. through 71., and 74., 75., 78. and 80.

Title 18 Section 371 - Conspiracy to commit offense or to defraud the United States;

Affidavit paragraphs: 6. through 67., and 69. through 71., and 73. through 75., and 78. through 80.

Title 18 Section 1702 - Obstruction of correspondence;

Affidavit paragraphs: 53., 81. through 84.

Title 18 Section 1703 - Delay or destruction of mail or newspapers;

Affidavit paragraphs: 53., 81. through 84.

Title 18 Section 1709 - Theft of mail by officer or employee;

Affidavit paragraphs: 53., 81. through 84.

Title 18 Chapter 95 - Racketeering;

Affidavit paragraphs: 56., 60., 61. and 72.

Title 18 Chapter 96 - Racketeer influenced and corrupt organizations;

Affidavit paragraphs: 6. through 67., and 69. through 76. and 78 and 79.

Title 18 Section 2232 - Destruction or removal of property to prevent seizure;

Affidavit paragraphs: 18. and 61.

Title 18 Chapter 119 - Wire interception and interception of oral communications;

Affidavit paragraphs: 54.

Federal Income Tax Evasion;

Affidavit paragraphs: 57. and 59.

Breaking into plaintiff's apartment in New York, New York, without legal process, probable cause, search warrant or other lawful authority in violation of the United States Constitution's ~~XXXXXXXXXX~~ prohibition of searches without warrant.

Affidavit paragraphs: 12. and 42.

(35) The statutes of limitations have not been exhausted, because plaintiff is still being criminally persecuted on behalf of the original criminal law violators, and because the conspiracy by these original law violators has persisted to this date and continues to persist.

(36) It is petitioned that the court order that the investigation and prosecution of this case should be centrally carried out by the United States Attorney General, defendant, because this is one large centrally organized conspiracy by racketeer influenced and corrupt organizations. This is further warranted by the fact that United States Code Title 28 Section 535 permits and obliges the United States Attorney General to conduct investigations of crimes involving Government officers and employees, of whom there are many involved in this conspiracy.

(37) It is also petitioned that the court turn this case over directly to a Federal Grand Jury or Special Federal Grand Jury regardless of the United States Attorney General's actions, since racketeer influenced and corrupt organizations are involved, and to order the plaintiff to appear before such Grand Jury or Special Grand Jury after fool-proof security arrangements have been made for plaintiff with particular emphasis on unadulterated water, unadulterated food, and unadulterated medicines, and proper legitimate medical care, if plaintiff should ask for same. Plaintiff also to be authorized to write his own prescriptions for medicines

(38) It is also petitioned that the court order defendant United States Secretary of State to furnish plaintiff the consular protection he is entitled to as a citizen of the United States, while plaintiff remains outside the United States of America. This is necessary, because

plaintiff continues to be criminally persecuted and continues to be made ill by illegal adulteration of water, food and medicines, due to the fact that all United States Consuls asked for such protection have failed to provide same.

(39) It is also petitioned that the court order defendants United States Attorney General or the Government of the United States of America to make fool-proof security arrangements for plaintiff in the United States of America in accordance with United States Code Title 18 Chapter 223 - Protected Facilities for Housing Government Witnesses -, with particular emphasis on unadulterated water, unadulterated food and unadulterated medicines, and proper legitimate medical care, if plaintiff should ask for same. Plaintiff also to be authorized to issue his own prescriptions for medicines. This is required, because only then can plaintiff return to the United States of America as a government witness.

(40) It is also petitioned that the court appoint legal counsel to protect plaintiff's legal rights. This is required, because plaintiff was unable to obtain legal representation from the Attorneys at Law contacted direct, nor from the Legal Aid Society, nor from the American Civil Liberties Union, nor from the Legal Referral Service of the Association of the Bar of the City of New York and the New York County Lawyers' Association, all of New York, New York. Under the American system of justice, plaintiff is entitled to such legal representation, especially since his civil- and constitutional rights have been violated with extraordinary severity.

(41) This application is filed in duplicate. Should any further copies be required, the Clerk of Court is requested to reproduce same and to serve them upon the respective defendants.

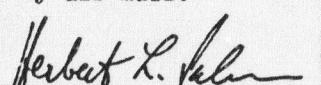
(42) Plaintiff will remit the filing fee and possible other court fees on receipt of the court's advice of the amount.

(43) The court's communications are requested by air mail.

Date: September 9, 1974

5 October 15, 1974

Signed:



Plaintiff

Address: Herbert L. Palm
Gro. Niddastrasse 19a
75 Karlsruhe 41
Germany.

BEST COPY AVAILABLE

London, England
England (the United States of America))
Exhibit A)
75 Civ. 315)
Judge Charles M. Metzner

AFFIDAVIT

EXHIBIT A

75 Civ. 315

Judge Charles M. Metzner

I, the undersigned Herbert L. Palm, on oath say:

1. I am a citizen of the United States of America.
2. I am a World War II veteran and have an honorable discharge as Master Sergeant from the United States Army.
3. I have never been accused or convicted of a crime and have had no contact with members of any police agency regarding law violations on my part outside of a few traffic- and parking tickets.
4. I can furnish the best possible character references.
5. I have resided at 645 West 160 Street, Apartment 3A, New York, New York 10032, since 1947.
6. In 1965, I was deliberately criminally malpracticed on by urologists Stanley I. Glickman, M.D., at his office 45 East 85th Street, New York, New York 10028, by Dr. Tojino, M.D., at Vanderbilt Clinic, The Presbyterian Hospital, New York, New York 10032, and by Myron S. Roberts, M.D., at Doctors' Private Offices, Harkness Pavilion, The Presbyterian Hospital, New York, New York 10032, for the purpose of causing me a so-called "natural death", after I had escaped several attempts on my life by other means.
7. Dr. Stanley I. Glickman, whose patient I was, on May 18, 1965 deliberately infected my prostate gland by deliberately rectally inducing an infection causing agent without my knowledge and consent. There is no legal medical procedure that calls for the rectal induction of an infection causing agent.
8. Dr. Tojino, whom I saw on June 1, 1965 on account of Dr. Stanley I. Glickman's deliberate criminal malpractice, refused to treat this malpractice, unless I first underwent measurement of my urinary bladder, a procedure which was not at all required for treating me. Under the pretense of measuring my urinary bladder with a catheter that had a metal spring inside, Dr. Tojino deliberately poured cauterizing nitroglycerin liquid and another deleterious chemical agent on both my kidneys and my genito-urinary tract.

He had no permission from me or anyone else of my family for an operative procedure and the use of chemicals outside of vaseline or petroleum jelly which he did not use. He did not treat Dr. Stanley I. Glickman's criminal malpractice at all.

There is no legal medical procedure that calls for the treatment of kidneys with nitroglycerin cauterizing liquid.

9. Dr. Myron S. Roberts, whom I saw on June 7, 1965 on account of Dr. Tojino's and Dr. Stanley I. Glickman's criminal malpractice, caused me an unbearably painful epididymitis by deliberately rectally inducing without my knowledge and consent a capsule containing another infection causing agent under the pretense of examining my prostate gland.

In addition, knowing full well the details of Dr. Tojino's malpractice, he deliberately prescribed thirty MADRIPON Tablets of five hundred milligrams each, a Sulfa drug which was completely contraindicated for my condition and, if taken, would in all probability have killed me.

On leaving, the effects of Dr. Myron S. Roberts' criminal malpractice had not yet been felt by me, but he told me: "Next time, you go back to the Vanderbilt Clinic. They do it cheaper." The shell of the capsule came out with my stool the next day.

After the unbearably painful epididymitis had set in, it became clear to me that this meant that he expected me to consent to castration, and that the operating urologists would then have taken the opportunity to murder me on the operating table.

There is no legal medical procedure that calls for the rectal induction of an infection causing agent and the deliberate prescription of a totally contraindicated drug.

10. Prior to the criminal medical malpractices I saw what I now know were members of the New York crime syndicate in the waiting rooms of the three urologists. I may be able to identify them from photographs. They, no doubt, gave the criminal malpractice instructions and supplied the infection causing agents.

11. Simultaneously, the illness caused by these deliberate criminal medical malpractices was aggravated by heavy illegal and criminal adulteration of the running water in my building and others and of my food with various chemicals that do not belong in water and food and which are forbidden by law, while my kidneys were acutely wounded and inflamed. This, together with the chemicals used by Dr. Tojino, resulted in severe allergies to a good number of chemicals.

12. The illegal and criminal adulteration at that time was mainly carried out by our building superintendent, Russell Starkley, and his friend who lived and, most likely, still lives diagonally across the street. This friend of his had at that time a Cadillac automobile

with 1965 New York State license plate No. 9 C 8263.

They illegally and criminally induced these chemicals into the water supply in the basement of our building and illegally and criminally broke and entered my apartment daily without search warrant with unauthorized crime syndicate or police supplied keys and severely adulterated my food.

13. Also, our then cleaning woman, Mrs. Anne Lockett, of then 1469 Fifth Avenue, New York, New York, illegally and criminally adulterated my food with Helme Scotch Sweet Snuff and nitrate derivativos from bullet blanks manufactured by Remington Arms. I found both in her handbag. She was no user of snuff and had no gun.

14. Also, our butcher of twenty years, Joseph Shevack of Shevack and Fox, 3867 Broadway, New York, New York 10032, illegally and criminally adulterated the meat with nitrite salts and other crime syndicate or police supplied deleterious chemicals.

15. On September 16, 1965, Inspector Eugene Gaffney of the Bureau of Sanitary Engineering, New York City Department of Health, whose department I had asked for an inspection, did not permit me to inspect the basement of the building 645 West 160 Street, New York, New York 10032, with him when superintendent Russell Starkley objected. He arranged for Russell Starkley to remove the adulterant long enough for him to take a water sample back to the laboratory.

The reply received was that the water was potable without stating its chemical contents which I had requested in the first place. In any event, Inspector Eugene Gaffney had thrown out ~~that~~ the water sample which he took on arrival and came back to my apartment after his first departure and took a new sample after Russell Starkley had shut off the adulterant and after he had telephoned the Bureau of Sanitary Engineering.

16. The other physicians, whose names I shall supply in due course, including those of the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, soon after the criminal malpractices by the three urologists, refused to give me a diagnosis or treat me properly. Most deliberately and criminally prescribed drugs or preferably handed me drug samples which were so badly contraindicated for my condition that they would in all probability have killed me, if taken.

17. The criminal malpractices by urologists Stanley I. Glickman, M.D., Dr. Tojino, M.D., and Myron S. Roberts, M.D., at least caused me the following illnesses:

- a) Blisters or open wounds on my kidneys,
- b) an acute pyelonephritis,
- c) an acute cystitis,
- d) an acute prostatitis,
- e) an acute epididymitis,
- f) severe toxic liver damage,
- g) anemia,
- h) infection and swelling of the entire endocrinial and lymph glandular system,
- i) visible swelling and discoloration of my neck,
- j) severe damage to the vegetative nervous system,
- k) coronary insufficiency,
- l) myocardial weakness,
- m) severe hypotension,
- n) an attack of kidney tuberculosis,
- o) an attack of lung tuberculosis,
- p) severe allergies,
- q) spitting of blood,
- r) a large quantity of blood and mucus in my feces,
- s) my face was as white as a sheet,
- t) and other illnesses.

In other words, I was fatally ill. I only survived due to my original good health.

18. On September 1, 1965, I went to the offices of the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, and applied for hospital admission for medical treatment. I had a right to such hospitalization and medical treatment as an American veteran. Besides, I have service connected disabilities which were at the time of my discharge from the United States Army rated at ten per cent, and which on September 1, 1965 and thereafter had a rating of less than ten per cent.

At the time of making this application for medical hospitalization and medical treatment, I had at least the illnesses stated in paragraph No. 17. of this affidavit.

Veterans Administration physician Dr. Cooney, M.D., stethoscoped me, took my blood pressure and otherwise examined my neck, mouth and body.

The more ailments he found, the more Dr. Cooney sadistically grinned. I did not have to tell him about the urological criminal malpractices because it was obvious that he had been informed about it by others in advance. He nevertheless made no urological examination. I saw with my

own eyes that he noted down my blood pressure as having been 95/50, but in all probability it was even lower. However, a blood pressure of 95/50 is already severe hypotension and requires medication and hospitalization. Both were denied me by Dr. Cooney.

Dr. Cooney could hear through his stethoscope that I had coronary insufficiency and myocardial weakness. This was further confirmed by the electrocardiogram that was taken. This also requires medication and hospitalization. Both were denied me by Dr. Cooney.

Dr. Cooney saw that my neck was severely swollen and discolored and also that my shoulder ganglia were swollen and that my face was as white as a sheet, indicating anemia. He could see from my tongue and mouth that I was severely ill, that I was allergic and that I was spitting blood. He could manually determine that my liver was congested. Besides, I had brought him a sample of black stool in the hope that he would get it laboratory tested. This meant that I had blood in my stool, and this was confirmed later on through laboratory tests of Bethanien Krankenhaus (hospital) in Frankfurt am Main, Germany. Besides, the stool was full of intestinal mucus. Dr. Cooney did not accept the sample for laboratory analysis. All this required infusions, blood transfusions, medication and hospitalization. All this was denied me by Dr. Cooney.

After finishing the physical examination, Dr. Cooney wrote out requisitions for various laboratory tests, chest X-rays and an electrocardiogram and a referral slip to the psychiatric department. I was only told about the latter after I was finished with the medical clinic.

Dr. Cooney then showed these requisitions to his colleague next door, who, I presume, was the medical clinic chief. This physician then told him to cancel the laboratory tests. Same were, however, absolutely essential for proper diagnosis and treatment of my illness. This was exactly the reason why he did not want any laboratory findings in my records, as they fully expected me to die shortly thereafter.

When Dr. Cooney filled out the requisition for chest X-rays, he grinned and said sarcastically that he had heard a wheeze in my chest. Actually, he did not order them for any diagnosis but to cause me further irreparable damages. I refused to take the chest X-rays, since I knew that they were contraindicated for my circulatory complications, my anemia and my glandular infections, etc. However, I consented to the electrocardiogram, as same could do me no harm, if carried out the regular way.

When I entered the electrocardiogram room, the electrodes were already prepared. After the electrocardiogram was finished, I did not get the stuff that was put on the electrodes completely off my skin. Normally, either factory salted petroleum jelly or water moisture are used. Same are harmless, and the jelly comes off the skin promptly. However, what the electrocardiogram technician had put on the electrodes turned out to be a chemical that caused me bone pain or blood vessel pain or both for many months to come. It was put on with tar and it took me several days and lots of experimentation with various solvents until I finally got it off my skin with ether. Meanwhile, however, the deleterious chemical had caused the damages it was intended to cause and it was, no doubt, meant to complicate my circulatory complications further. I even phoned the electrocardiogram technician next day to find out what chemical he had used and told him that I could not get it off my skin. As expected, he denied any wrongdoing and claimed that he had used the usual salted petroleum jelly. This was a barefaced lie.

While I was waiting for the electrocardiogram to be taken, I saw a member of the New York crime syndicate who watched me carefully in the waiting room. No doubt, he had specially supplied these chemicals to the Veterans Administration at the request of Dr. Cooney or his colleague, as it is unlikely that the Veterans Administration would have such chemicals in stock, because there is no legal medical procedure for which they could be used. After the electrocardiogram was finished, the technician sarcastically said that there was nothing wrong with my heart, because the electrocardiogram still ^{ed} show some sort of heart beat. He then took it to the presumed medical clinic chief and came out telling me that there was nothing wrong with me and that I should now go to the psychiatric department.

Dr. Cooney and colleague obviously referred me to the psychiatric department in the hope that they would make an encephalogram and put the same deleterious chemical with tar on the electrodes. This would have caused unbearable pain of the head for many months to come and interference with my brain circulation. They had, no doubt, also hoped that the psychiatrist would commit me into a Veterans Administration or New York City or New York State mental hospital, where I would then have died from contraindicated tranquilizers.

However, Veterans Administration psychiatrist Dr. Ferber phoned Dr. Cooney and wanted to know from him why he had referred me to the psychi-

stric department. I gathered that he then told him that I was no mental case and that he wanted no part of this conspiracy,

Before leaving, I told Dr. Ferber that I had been criminally malpracticed on by urologists.

After this criminal malpractice, I received a letter from the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, dated September 7, 1965, Reference No. 3006-136P5 - my claim No. C 6 506 896 - , signed by Mr. Felice Pepe, Chief, Medical Administration Division, stating:

"Your application for hospital treatment or domiciliary care, VA Form 10-P-10, has been disapproved for the reason checked (X) below:

XXX The medical findings do not indicate that hospitalization is required at this time. In the event there is any change in your condition which, in the opinion of your physician, requires hospitalization, he should immediately notify this office."

The Veterans Administration physicians, who initiated this letter of rejection, knew, of course, at time of issuing it that I would not be able to find a private physician who would certify that I required medical hospitalization.

In response to an inquiry by the Honorable Bella S. Abzug, House of Representatives, the Veterans Administration, Veterans Benefits Office, Washington, District of Columbia 20421, replied with letter of July 30, 1974 - Reference No. 372/212 - C 6 506 896 PALM, Herbert L. - over the signature of Miss Dorothy L. Starbuck, Director:

"Our records show that Mr. Palm's Veterans Administration file has been inactive with the last correspondence had with him October 31, 1947..."

If the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001, should have no other files on me aside from that examined by Miss Dorothy L. Starbuck, this would mean that at least the following documents bearing on this criminal medical malpractice were illegally removed from my file:

(1) All records pertaining to my application for hospitalization of September 1, 1965, including all records of the medical and psychiatric examination and criminal medical malpractice at the out-patient clinic of the Veterans Administration, Regional Office, 252 Seventh Avenue, New York, New York 10001;

(2) My application for an additional Five thousand dollars Veterans Administration Life Insurance. This application was, as far as I can presently determine, made on or about May 4, 1965, prior to the criminal

medical malpractice by Dr. Stanley I. Glickman, and contained the findings of a medical examination of my person made by Herman R. Cohn, M.D., 3125 Tibbatt Avenue, Bronx 63, New York. These findings were signed by Herman R. Cohn, M.D., and showed that aside from a temporary tendency to urinary bladder contractions, I was in perfect physical condition. This contraction was not caused by an enlargement of the prostate gland, which was normal, but mainly by the involuntary nervous system due to overwork.

19. I was criminally deprived of this additional Veterans Administration life insurance coverage, because the Veterans Administration thereafter demanded further statements from physicians about old inactive ailments, and I could not get any physician to make any new statement due to the criminal medical malpractice which had meanwhile taken place.

20. On October 23, 1965, I was brought to the Kingsbridge Veterans Administration Hospital, Bronx, New York, through the conspiracy of the late psychiatrist Joseph Livingston, M.D., then of 714 West 181 Street, New York, New York 10033, who appeared a day before at my apartment and whom I did not call nor ever see or know before, and of two New York City police officers who appeared at my apartment in the morning of October 23, 1965 while I was eating breakfast and forced me to come along with them and put me into a taxi, took the taxi driver's identification and told him he had to get me to Kingsbridge Veterans Administration Hospital or otherwise they would get him. Real mental patients have to be accompanied by the police officers and they must give their names and badge numbers for the hospital records.

On arrival at Kingsbridge Veterans Administration Hospital, I was presented with an application form for psychiatric hospitalization and was immediately put under guard. This meant the medical personnel there had been informed in advance of my being on the way and that I was a criminal medical malpractice case in connection with the Grand Jury investigation into police corruption. I crossed out everything in the application form pertaining to psychiatric hospitalization or treatment and wrote in the application that I wanted medical treatment or medical hospitalization.

When, after some waiting, I was brought or sent to the admission physician, I told him that I was brought there illegally, that I needed

no psychiatric treatment but that I needed medical treatment. I then refused to answer all further questions, since I knew that my answers would be used to twist the facts. This physician was, according to my recollection, a native of Spain.

He clearly saw that I was not mentally ill. He then said that there was no free bed available at Kingsbridge Veterans Administration Hospital. However, he refused to release me. Instead, he put me under the guard of a psychiatric orderly, who was a native of Germany, so that I could not escape. I was held in the lobby of the hospital without anything to eat for 4 to 5 hours or more until the New York City ambulance arrived which this Veterans Administration physician had ordered. The ambulance took me at the direction of the Veterans Administration physician to New York City's Jacobi Hospital, Bronx, New York, where a young physician and a man, who was undoubtedly an outsider with a tape recorder hidden in his briefcase, interviewed me. I told them about the criminal medical malpractice, but they refused to give me medical treatment. They also claimed they had no bed for me and put me under police guard for several hours more, all without food, until another New York City ambulance brought me under police guard to the psychiatric division of Bellevue Hospital. The admission physician entered in my chart No. 02-77-86 a blood pressure of 130/70 or so with laughter on his part, when it was actually 95/50 or lower even. For identification, this physician was obviously a native of Latin America or Spain. This was at 9 or 10 PM, and I had nothing to eat since breakfast until the next morning. The Bellevue Hospital physician then ordered the administration of a severely contraindicated heavy dosage of Thorazine. Had I not managed to avoid most of the Thorazine administered to me during my illegal retention of thirteen days in the psychiatric division of Bellevue Hospital, I would have died of cardiac arrest, since Thorazine lowers the blood pressure further, not to speak of having been severely contraindicated for toxic kidneys and^a toxic liver, all of which I had at the time in a severely acute state.

No medical treatment was given me at Bellevue Hospital either inspite of the fact that I told the psychiatrist in charge of my case, Dr. Serban, of the criminal urological malpractice. Dr. Serban told me that such criminal medical malpractice was nothing new to him, but in my chart he entered some of what I told him but made the conclusion that this was not so and that I was all confused, according to someone who saw my chart and whose name I can supply also. Even though I requested

Dr. Serban, as well as a resident physician who saw me on Sunday, October 24, 1974, to stop the administration of Thorazine or of any other tranquilizer, I believe that my dose of Thorazine was even increased after my admission. While under Dr. Serban's care I was given one fifty milligrams tablet of Thorazine three times per day.

I was seen several days after my arrival at Bellevue Hospital by a urological resident, because on arrival I had a new urinary contraction due to the events of that day. Same resolved itself before this urologist saw me. However, he rectally examined my prostate gland and could, therefore, determine that there was an acute prostatitis. I told him about the criminal medical malpractice by the three urologists, but he did not give me any diagnosis and no treatment and never came back again. All he wanted to know was the names of the urologists who did it. I refused to give him the names, since I expected him to then turn around and cause me further damages.

I was kept in the psychiatric division of Bellevue Hospital until November 4, 1965, a day before I was to appear before a Judge.

This illegal retention of thirteen days in the Psychiatric Division of Bellevue Hospital was criminally caused me by the physician at Kingsbridge Veterans Administration Hospital and would have cost my life if I had not managed to avoid the Thorazine.

As it was, I left Bellevue Hospital considerably sicker and weaker than when I was brought there.

21. That I required medical treatment and medical hospitalization when I applied for it at the Veterans Administration is borne out by the fact that later on I had to spend a total of eighty five days as an in-patient at Bethanien Krankenhaus (hospital) in Frankfurt am Main, Germany, aside from extensive out-patient treatment at the University Polyclinic in Prague, Czechoslovakia, and various other places in Germany, during which time among other things the following treatment was required and given me: Twelve injections to strengthen my heart and circulation, one blood transfusion, thirty two infusions of liver detoxifying agents and twenty injections totaling ten grams of Streptomycin.

22. This treatment was without question already required on September 1, 1965 when I applied for admission to a Veterans Administration KHEP hospital for medical treatment, and also earlier, when I had seen a number of private physicians who malpracticed further on me.

23. I managed to obtain this treatment in Europe with great difficulty about one year after the initial criminal medical malpractice in New York, New York. I managed to escape to Europe via Canada during the night of January 22, 1966. This was after the Grand Jury investigation into New York City police corruption had ended. But I was even then watched, and prior to that was followed around by members of the New York crime syndicate just about whereever I went.

24. After this treatment, I was able to live a fairly normal life without too strict a diet.

However, this original criminal medical malpractice, which is the same or equal to that developed in the Auschwitz concentration camp, left me with permanent severe allergies to a variety of chemicals, permanent damage to my vegetative nervous system which is activated by such chemicals, permanent kidney parenchyma damage, permanent liver parenchyma damage, permanent prostate gland damage, permanent damage to my circulatory system, signs of inactive tuberculosis on my lungs and kidneys, probable sterility, etc.

25. I returned to New York, New York in January 1968. I was then left unharmed until July 1968 when I was again made ill with acute toxic liver damage, circulatory complications, etc. by deliberate criminal adulteration of water and food. This time, many food items were delivered to the stores already adulterated at the producers' plants or were adulterated by the stores with high pressure equipment that sprays the adulterant in gaseous form that penetrates just about all wrappers. I am in a position to name and/or identify a good many of the adulterators.

26. The Federal, New York State and New York City government agencies in charge of the water and food laws, with whom I filed repeated complaints whitewashed them every time and refused to enforce the laws.

27. I have had considerable correspondence about the criminal adulteration of food in New York, New York, with Mr. Wooms L. Clevenger, Director, Food and Drugs, Region II, Food and Drug Administration, United States Department of Health, Education and Welfare, Brooklyn, New York, from 1969 to 1971. He sometimes got the adulteration stopped for a while without admitting that it took place. He did not reply to my last letter of March 31, 1971 in which I advised him of the criminal medical malpractices in written form. He knew since 1969, however, that these criminal medical malpractices had taken place because I had on

April 29, 1969 at his Brooklyn office told Inspector Kenneth Klein all about it, and he reported it to Mr. Clevenger. That this was so, can also be seen from the tone and remarks in the correspondence from Mr. Weems L. Clevenger and from some of his deputies. I am in a position to supply this correspondence if it should not be located at Mr. Weems L. Clevenger's Food and Drug Administration office in Brooklyn, New York.

The Food and Drug Administration in Brooklyn, New York, also whitewashed the laboratory results of severely adulterated bottled spring water which I personally handed to their Inspector Mulnick on November 21, 1969 in my apartment.

28. I have also had extensive correspondence with the officials in charge of the consumer programs and laboratories of the United States Department of Agriculture in New York, New York, Beltsville, Maryland and Washington, District of Columbia, and personal representations at their New York, New York, offices.

They also whitewashed my complaints and their laboratory findings of a heavily deliberately adulterated chicken part which caused me severe illnesses, and which I had furnished their New York, New York, laboratory for analysis.

Instead, they saw to it that thereafter this chicken farm's name and United States Department of Agriculture inspection information were removed from the wrappers. They refused to enforce the laws covering adulteration of meat, poultry and fish, all of which are under their jurisdiction.

I have furnished copies of my correspondence and further particulars to Mr. John V. Graziano, Director, Office of Investigation, United States Department of Agriculture, Washington, District of Columbia 20250, on July 17, 1974, but have not heard anything from him since July 5, 1974, at which time he did not have the correspondence.

29. In 1969, I have also had correspondence with the Director of the Division of Food Control of the New York State Department of Agriculture and Markets, Albany, New York, Mr. Robert H. Newell, and also had made personal representations to this agency's Deputy Director in New York, New York, Mr. Thomas J. Mahoney. They would not accept criminally adulterated meat and food samples from me, did not permit me to see their laboratory findings, and the adulterators were tipped off in advance of impending inspections. They did not enforce the laws under their jurisdiction.

This correspondence I can also make available with further particulars.

30. I also made personal representations to and had correspondence with Mr. Richard Newman and his chief, Mr. Charles Miles, of the Sanitary Engineering Section of the New York State Health Department in New York, New York. After first promising an inspection in my presence of the building in which I lived, 645 West 160 Street, New York, New York 10032, and a laboratory analysis of water samples, they finally refused to do so or to order the New York City Bureau of Sanitary Engineering of the New York City Department of Health to enforce the law.

I can also furnish this correspondence.

31. There were also personal representations of mine regarding the adulterated running water with the New York City Building Department, and no serious inspections were made. The inspectors refused to search the basement of 645 West 160 Street, New York, New York 10032 in my presence, took no water samples and refused to enforce the law.

32. There were also personal representations to and inspections by the New York City Health - and New York City Consumer Affairs Departments' meat inspectors who refused to accept samples from me for laboratory analysis. Also, the New York City Department of Health's food laboratory chief and its food poisoning chief refused to accept samples from me for chemical analysis and refused to enforce the laws under their jurisdiction.

In each case, the butchers were tipped off in advance of the impending inspections which I was also not permitted to attend. They made, aside from on-the-spot checks for sodium sulfite, which was not the suspected chemical, no laboratory tests and whitewashed the illegal adulteration.

33. On the other hand, the various private food laboratories, whose names I can also supply, contacted by me, refused to carry out such tests on the grounds that they were to be done by the law enforcement agencies.

34. Aside from all the correspondence with these government agencies, I can supply the names of the officials I have personally seen about these crimes and the dates. I told most of those officials about the criminal medical malpractice, etc.

35. The lack of law enforcement, whitewash, cover-up and conspiracy on the part of the above mentioned government agencies in charge of the enforcement of the water, food and drug laws of the United States

are to a great extent responsible for my illnesses, inability to work and earn money and for my forced exile from the United States of America.

36. I was thus kept ill almost continuously. Later, a febrile bronchitis was deliberately caused me by inducing a chemical into the water that caused me constant unnatural perspiration.

37. Leo G. Hess, M.D., 621 West 169 Street, New York, New York 10032, and Alexander Muller, M.D., 800 Riverside Drive, New York, New York 10032, took this occasion then to deliberately malpractice further. This was part of the conspiracy.

Knowing of my permanent kidney and liver damages as well as all other damages, Dr. Leo G. Hess on March 8, 1971 and March 10, 1971 deliberately gave me large injections of Terramycin instead of Penicillin. Terramycin is and was contraindicated for kidney and liver damage, whereas I tolerate penicillin injections perfectly. This started to cause kidney and liver toxification, diarrhea and other damages. Dr. Leo G. Hess then went on vacation. He apparently did not want to do the whole murder job himself. He gave me no name of a substitute physician, even though my febrile bronchitis persisted.

38. On March 13, 1971, I went to see Alexander Muller, M.D., whom I did not know. I told him about the Terramycin injections of Dr. Leo G. Hess. Dr. Alexander Muller asked me then whether I was allergic to Penicillin. I told him that I tolerate Penicillin injections perfectly. From this he was sure that I was the murder victim about whom criminal malpractice instructions had been disseminated among the medical profession. He, therefore, gave me a Tetracyclin injection which is even more contraindicated for kidney and liver damage than Terramycin. He then prescribed fifteen Achromycin capsules of two hundred fifty milligrams each, to be taken four times per day. Achromycin is the direct chemical relative of Tetracyclin, and is just as badly contraindicated for kidney and liver damage. Since it was given orally, it caused even more damages. After five capsules, I developed a severe diarrhea and skin rash. I did not take the remaining ten capsules.

39. On March 18, 1971, the meat bought from butcher Paul Cymerman, 4051 Broadway, New York, New York, was severely criminally adulterated with a chemical that caused the diarrhea to become worse. Paul Cymerman knew that he was helping to murder me. In the past, a crime syndi-

cate member or police officer with sunglasses on followed me at least twice into his store and conferred with him after I had left without buying anything. I may be able to identify him if confronted.

40. By then I was sure that this was a new serious attempt on my life.

41. On March 22, 1971, I saw Dr. Leo G. Hess and asked him to get the adulteration of meat and foods stopped. He refused and wanted me to take either another contraindicated Terramycin injection or an injection of adulterated Vitamin B 12, of which a newly delivered bottle was standing on one of his desks, "to clear up the bronchitis". Vitamin B 12 is useless for febrile bronchitis. He had given me such an adulterated Vitamin B 12 injection in 1968, and same had caused me circulatory complications and pain in the heart area for many months thereafter, as it was specially adulterated for this purpose. I tolerate unadulterated Vitamin B 12 perfectly.

I refused the Terramycin and Vitamin B 12 injections and asked him for a Penicillin injection. He refused to give me Penicillin.

He became quite nasty and sarcastic and told me that I could now change physicians. He made it quite clear that I would not survive the criminal medical malpractice this time.

42. While I was visiting Dr. Leo G. Hess, someone, most likely, Mrs. Starkley, the building superintendent's wife, or her husband's friend who in 1965 had the Cadillac automobile with 1965 New York State License Plate No. 9 C 8263, entered my kitchen and criminally adulterated my good old oatmeal or replaced it with a heavily adulterated partially filled package of oatmeal, and also adulterated other foods. This oatmeal was so heavily poisoned that one or two spoons of it caused me severe burns with blisters on my tongue. This caused me even a more severe diarrhea with hepatic cramps and a heavy allergic reaction in my face, eyes and forehead. Foremost, however, it caused me an immediate Tachycardia with coronary insufficiency and myocardial weakness. My pulse was going day and night at a rate of over one hundred per minute for many weeks thereafter.

No doubt, Dr. Leo G. Hess or his wife, who most of the time illegally tape-recorded my conversations with her husband next door, had phoned the crime syndicate while I was waiting in his office.

43. By March 22, 1971, all foods in all stores and restaurants throughout the City of New York and the Metropolitan area had been adulterated with chemicals to which I had been made allergic. Most were of the type which aggravated my diarrhoea, caused unnatural perspiration and impaired my respiration.

I had lost about fifteen pounds within a few days and continued to radically lose weight. My heart was so badly weakened that I could expect it to stop any minute. This newly induced kidney damage also rapidly elevated my blood pressure to 160/90. I never had such high blood pressure in my life. It was obviously engineered to cause an irreversible heart attack, since my blood vessels were not accustomed to such sudden drastic elevation of the blood pressure. My blood pressure was after treatment of the criminal medical malpractice of 1965 about 115/70 and at no time exceeded 130/80 or so. Later on, after my escape to Europe, it dropped below the 115/70 level, as it had done during the earlier criminal medical malpractice.

44. On March 30, 1971, being fatally and noticeably ill, I went to the office of the New York City Consumer Affairs Commissioner. I saw her personal assistant, Mrs. Bruck, and told her about the criminal medical malpractice and adulteration of meat and other foods. I asked her to arrange an appointment with the Commissioner or to otherwise initiate prompt law enforcement action. Mrs. Bruck refused both requests. All she gave me was tears.

45. I then went on March 30, 1971 to the private offices of the New York City Health Commissioner, saw her personal assistant, who did not give me her name, told her about the criminal medical malpractice and adulteration of water, meat and food and asked her for an appointment with the Commissioner or to otherwise initiate immediate law enforcement action. She refused both requests.

46. On March 31, 1971, I wrote to Mr. Weems L. Clevenger, Director, Food and Drugs, Region II, Food and Drug Administration, United States Department of Health, Education and Welfare, Brooklyn, New York. I outlined the food items which were then being sold in his Region in criminally adulterated form and for which his office had jurisdiction. I also explained to him in detail the new criminal medical malpractices on the part of Dr. Leo G. Henshaw and Dr. Alexander Muller, and confirmed to him that I had told his Inspector Kenneth Klein on April 29, 1969 about the earlier criminal medical malpractice.

I also pointed out to him the food items which I needed immediately in unadulterated form for treatment of my new damages and that I was in the process of starving to death, since I decided to eat practically nothing of the food items then being offered for sale.

While a signed postal return receipt dated April 1, 1971 is in my possession, Director Weems L. Clavenger or anyone else of his staff never replied to this letter. They had answered all my earlier letters.

47. Due to the refusal of these three high government officials and their Departments to enforce the law after I had filed my complaints, I would have died from cardiac and circulatory failure within a few days, if I had not escaped to Europe on April 13, 1971.

48. All these medical malpractices were designed to cause me a so-called "natural death".

I am sure that I am by no means the only case to whom this criminal medical malpractice and chemical poisoning has been done in the United States. I have had indications and evidence that these "natural death" criminal medical malpractices had been going on all the time but I did not understand these indications until after it had been done to me. Thereafter, I have had also indications and evidence that I was also not the first case for the urologists involved. However, I may well be the only ~~XXXXXX~~ victim who ever survived this sort of criminal malpractice and chemical persecution. I shall be able to give evidence on this matter and name witnesses of other criminal medical malpractices. I can also give evidence and name witnesses to the effect that others were disposed of by such criminal medical malpractices in connection with the New York County Grand Jury investigation into police corruption in 1965.

49. I can prove my criminal medical malpractice allegations by hospital treatment charts, diagnostic laboratory test reports, diagnoses and ~~XXXXXX~~ statements of physicians who treated me, etc., all of which I am in a position to submit.

50. In 1965, the criminal medical malpractice was carried out while a Grand Jury investigation into New York City police corruption was going on under the auspices of the New York County District Attorney.

In 1971, it was done to get the inconvenient victim out of the way for good, even though I had neither brought criminal charges nor sued or blackmailed anyone.

51. In 1971, advance arrangements had been made with European medical organizations to make sure that I would not get any treatment. I, therefore, was forced to travel around in various countries while seriously ill, treating myself as best I could until I finally obtained proper treatment several months later.

52. I have been and am still being constantly persecuted via INTERPOL. This is and was, no doubt, initiated by the United States Government employees who deal with INTERPOL. Whether this is done by INTERPOL Headquarters or by direct transmission by the police from country to country is immaterial. I have evidence that the latter procedure definitely took place and is taking place to the present, but in all probability both channels are being used. The police in every country I have been in illegally uses its communications facilities to transmit my name, picture and adulteration instructions from City to City and country to country. Train conductors and airline employees assist them in this persecution.

53. Also, all my mail has been and is being illegally opened in New York, New York, and wherever I happen to be for the purpose of discovering my friends and to find out who is helping me, as well as with whom I am corresponding regarding prosecution of this matter.

54. Also, my telephone had been tapped and my apartment had been surreptitiously bugged for years since at least the year 1965 in New York, New York. This was done illegally and without any court orders.

55. I have been and am still being persecuted throughout Europe in the form of adulteration of water, food and drugs in hotels, restaurants, apartment buildings, food stores, on the producers' level and by pharmacies.

I have been and am still being kept ill in this manner with only some short interruptions.

56. The reason for the original criminal medical malpractice was that the New York City Police Department and the crime syndicate had been told by a former employer, who I did not know was a crime syndicate member, that I would be a witness in the police corruption investigation conducted by a Grand Jury under the auspices of the New York County District Attorney. He did this to spite me because he had badly exploited me and I did not take his insults on top of it without answering back. He had also killed two jobs I had lined up with other plumbing supply distributors.

His name is Simon (Jimmy) Eigen of Eigen Supply Co., Inc., 194 Eighth Avenue, New York, New York. He and his brother Nathan Eigen, his sister Bessie Wiener née Eigen, his sister-in-law Mollie Eigen, his nephew Martin Eigen and relative Benjamin Present of then Eigen Industrial Supply Co., Inc., now Present Industrial Supply Co., Inc., Perth Amboy, New Jersey, plus their friends, whom I shall name in due course, were, aside from their legitimate businesses, engaged in the same activities as the Mafia and had Mafia friends.

I have evidence that these racketeering activities of the Eigens and associates ranged from Boston, Massachusetts to Washington, District of Columbia, and that the crime syndicate to which they belong or belonged was and is active throughout the United States. I can also name Simon Eigen's associate in California.

I worked for Eigen Supply Co., Inc. as a plumbing supply pricer and estimator from March 30, 1964 to November 20, 1964. I only found this out, however, when it was too late.

I am now, however, in a position to provide considerable evidence about their racketeering activities. These included wholesaling of narcotics, serving as headquarters for an illegal gambling ring, being owners of at least one but possibly more than one illegal brothel, and the murder of bookkeeper Hans Muenz (Muonz) in New York, New York, on November 11, 1964. This murder was arranged by the Eigens for the crime syndicate with the knowledge, at least, of the New York City Police Department.

This murder was carried out by at least two of Eigen Supply Co., Inc.'s regular employees, countermen Leonard Downs and Ted Saunders. The latter fired the fatal shots according to remarks made by Eigen relative Benjamin Present. He bragged on November 19, 1964 in my presence about his part in arranging this murder, but I was aware of it already shortly after the murder took place because of the tense atmosphere prevailing among those in the know when Leonard Downs did not return to work as expected and was apparently not heard from for several days. He came back to work on or about November 16, 1964 with a limping foot and worked from then on in street clothes and with a hat on in such way that he could not be recognized from the street, as his job was to serve customers on the ground floor. When I asked him what caused his foot injury, he said that his automobile was pushed over an embankment by a trailer truck upstate New York and was completely smashed. He was privately visited during that time by at least one member of the Tenth

New York City Police Precinct whom I can identify. Ted Saunders was employed at the Tenth Avenue Branch of Eigen Supply Co., Inc.. When I tried to phone him two days or so after the murder, I was told by another employee that Ted Saunders would call me back later, but he never did call me back that day.

Benjamin Presant bragged about the murder after patting me on the head and telling me: "When I am through with you, you will be a nice price clerk." He did this bragging only in my presence because my murder was already planned weeks earlier and was then hurriedly advanced to November 20, 1964, because on November 19, 1964 I had asked Simon Eigen for one week off without pay for health reasons, starting with the close of November 20, 1964. I had always been on good terms with Benjamin Presant, who shared my distaste for Simon Eigen, and it was indeed a surprise to me that he should gang up on me, since he knew that I had justified cause for talking back to Simon Eigen.

I escaped my murder on November 20, 1964 only by quitting work suddenly one hour earlier than usual, and was promptly followed by two cars, one of which contained several men. I went straight to the detective department of the New York City Police Precinct at Westworth Avenue and 182nd Street, New York, New York, and asked for police protection. This protection was refused me by a detective and his superior officer.

Leonard Downs also arranged car accidents for the crime syndicate.

57. The chief bookkeeper and office manager of Eigen Supply Co., Inc., Ted Fish, who worked for this firm for many years, and also prepared Simon Eigen's personal income tax returns, was, if not alive anymore, murdered by and for the Eigens by causing him a liver ailment. He was no alcoholic and he was in apparent good standing with the Eigens. He, no doubt, knew about their racketeering activities.

58. It seemed, however, that several months prior to November 1964, the Eigens were under Internal Revenue Service investigation for income tax evasion. One day, Simon Eigen, Ted Fish and two other Eigen employees, whom I shall identify in due course, plus a stranger, whom I may also be able to name, had a meeting in Simon Eigen's private sound-proof office, in front of which I worked most of the time. The next day, or so, Ted Fish dropped in only for a few minutes and from then on was home allegedly ill with a liver ailment. After some time, Simon Eigen hired a new chief bookkeeper whom he dismissed for lack of sufficient qualifications on November 20, 1964 or a week before.

According to my recollection, Ted Fish was never home ill before during the period I worked for Eigen Supply Co., Inc. It can be assumed that he had been criminally made allergic and that his liver was criminally damaged years earlier, so that he could be disposed of any time the Eigens wished, and that he was foolish enough to permit the Eigens to keep him in bondage after this had been done to him.

59. Aside from the illegal income from their racket activities, the Eigens committed wholesale income tax evasion in their legitimate business by not booking certain transactions at all. This was done on a steady basis and, no doubt, amounted to tens of thousands of dollars per year. I learned of this accidentally prior to my finding out that they were engaged in racketeering. I shall be able to give details on the mechanics of this income tax evasion. They apparently also had real estate holdings that were not in their name. I may be able to name one of the real estate firms that was in all probability fronting for them.

60. Some months prior to November 1964, there was also a meeting in Simon Eigen's sound-proof private office by seven suspicious looking men who started this meeting while I had gone for lunch. On my return, I wanted to see Simon Eigen for pricing instructions, and a fellow employee, whom I shall identify, told me he was not available, since he was in a meeting with seven "guys" in his private office. As I was working in front of this office, I saw that some wore sunglasses when the door opened, but I did not know who they were.

Many months later, I believe my criminal medical malpractice had already taken place, a picture of one of them appeared in the New York Post during the public investigation of the Stein-Irving Kaufman group of loansharks. The picture was that of loanshark Irving Kaufman. According to my recollection, this loanshark group was also tried and some were convicted by the United States District Court for the Southern District of New York some time thereafter. Two days later, I heard the same Eigen employee say that "people" were in Simon Eigen's private office the next day's evening after this earlier meeting and after I had gone home, and that they were still there when this employee went home. Simon Eigen was on that date in Boston, Massachusetts.

61. At the time of these meetings, there were a good number of burlap bags stored in Simon Eigen's private office. Some were removed by these men under the leadership of Irving Kaufman a few days later over a period of several days. These men wore then dusty old clothes. The contents appeared to be quite heavy. In all probability, the contents consisted of large diameter capped lead pipe pieces containing their

loanshark records and were buried by these men. Simon Eigen, their crime syndicate associate, no doubt, made these arrangements for them and supplied the lead pipe, or whatever they used. There were never before any burlap bags with plumbing materials stored in the offices of Eigen Supply Co., Inc. while I worked there. I shall give further particulars in due course.

62. All the American Consuls from whom I requested consular protection and forwarding of my information and evidence to the United States Department of Justice refused to do so.

63. On June 9, 1966, I asked Consul Ezell at the American Embassy in Bern, Switzerland, to use the Embassy's influence to get me proper urological treatment, to get the adulteration of food and water stopped and to report my case to the United States Department of Justice in Washington, District of Columbia. Consul Ezell refused all my requests, even though I had showed him evidence, including envelopes that had been illegally opened by my local post office in New York, New York. Instead, he asked me whether I had gotten into trouble with the police in New York, New York. I told him that I had no contact at all with the police but that racketeer Simon Eigen had apparently falsely told them that I would be a witness in the police corruption investigation.

64. In the spring of 1967, I was put under Marine guard at the American Embassy in London when I asked at the reception desk to see a personal assistant of the Ambassador. They then called Vice-Consul Francis Coleman Parrot who was in charge of security. He told me "to take a walk", even though I showed him visible evidence of adulteration of a parcel of medicine. He had in advance passed my picture around to the information desk and others. I had made my request without raising my voice.

I then went to the Consular Section where Consul White said "what did he do that for?" He meant, I should be dealt with in a more diplomatic manner. When I showed Consul White the visible evidence of adulteration of medicine which was carried out by employees of the Trafalgar Square Post Office in London, who illegally opened the parcel after it was resealed by British customs, he refused to give me consular protection and told me to deal with the London Police Department direct. He also refused to transmit my information to the United States Department of Justice in Washington, District of Columbia. At the same time he contacted the Immigration Section of the Home Office in an attempt to induce them not to extend my visa, but I already had gotten my extension before he contacted them.

65. On June 12, 1967, I was kidnaped by a detective, who did not identify himself, out of the Clerk's room where I peacefully waited to see an English-speaking prosecutor at the Palais de Justice in Paris, France. I had tried to file a complaint because the restaurants in Paris had been putting intestines damaging laxatives into my food, causing me a severe diarrhea for about two weeks with weakenigg of the circulatory system and possible new liver damage.

I was then put by the Criminal Police into Sainte Anne Mental Hospital with the consent of officials of the American Embassy who had never seen me nor talked with me. The purpose was to deport me to a mental hospital in the United States. However, I refused to return to the United States until such time that guarantees were given me that I would not be committed into a mental hospital and that I would be left unharmed.

The French police operate under a mental health law of the eighteen-hundredthirties. According to this law, only the police can release from the hospital those that they had put in. In the case of Frenchmen, no psychiatrist dares to apply for a release order before at least six months have elapsed, irrespective of whether or not the inmate is a mental case. No home visits are allowed these "police patients", whereas real patients, not put in by the police, spend in many instances most of the week at home.

In the case of foreigners, they are usually promptly deported.

There are no provisions for appeal in a court of law or to be represented by lawyers.

A few days after my detention, the American Consul in Paris, Miss Mary Chiavarini, visited me. She immediately saw that I was no mental case and promised to get me released in Paris within a few days.

However, after this first visit she did not reappear for several weeks. She then changed her tune to the effect that I would have to return to a mental hospital in the United States. She obviously had gotten these instructions from her colleagues at the American Embassy who had conspired to get me incarcerated in the first place. I told her that gangsters tried to murder me in New York, New York. She alluded to this in a report to the Department of State and made it out to be proof of my mental illness.

Professor Deniker, in charge of the clinic I was in, promised me then to get me released to friends in Germany, if they would furnish a letter to the effect that they would pick me up at the hospital in Paris. They promptly sent me such letter, whereupon Consul Mary Chiavarini came running and invoked an old treaty to the effect that I would have to return to the United States.

On the other hand, a few weeks earlier, a really badly disturbed American was released to Sweden only accompanied by his Swedish girl friend.

Meanwhile, Consul Mary Chiavarini made false official reports about me and my condition to the United States Department of State in Washington, District of Columbia, quoting Professor Deniker as classifying me as a "migratory paranoid who in the absence of treatment, could be dangerous."

I can certify that there is noone who can in truth claim that I ever did anything endangering others or to even cause a commotion. Neither do I take tranquilizers more than rarely.

I, in fact, needed since 1965 considerable rationality and wits in order to get proper medical treatment and to keep myself alive.

In October 1967, I finally consented to return to New York, New York, after Professor Deniker made it clear that he could not release me in Europe due to the American Embassy's attitude, and after his colleague, Professor Denber of New York, New York, had personally guaranteed me that I would neither be committed into a mental hospital in the United States nor physically harmed. After this consent was given, the United States Department of State deliberately delayed the formalities necessary for my return to the United States until the latter part of December 1967 and insisted that I be accompanied at my own expense by a hospital staff physician, even though I needed no supervision. He made the trip only on January 3, 1968, due to the holidays.

66. However, the no physical harm guarantee given me was broken by the New York crime syndicate and New York City police department at the request of organized medicine in July 1968 in the form of adulteration of water and food, after I had been employed by Chemical Bank, New York, New York, where my performance was highly appreciated.

67. On July 15, 1971, I personally asked Vice-Consul Janice Friesen,

at the United States Military Government in West Berlin to interfere on my behalf with the authorities to get the adulteration of food, etc. mainly in restaurants stopped. She refused to do so, telling me to go to the Police Department myself, even though she knew and I had told her that my complaint was foremost against the West Berlin Police Department without whose involvement my persecution could not be carried out. It was obvious that she knew in advance all about my persecution and had instructions not to help me. I also told her about the criminal medical malpractice in New York, New York on behalf of the New York City Police Department and crime syndicate.

68. I then tried to see the Commandant of the American Military Government in West Berlin, Major General Cobb. I told his assistant chief of staff, Colonel Terry over the phone from the guard house that I wanted to tell Major General Cobb about serious misconduct on the part of the West Berlin Police Department which was under his control, and that I wanted to file a complaint with him in this respect. Colonel Terry acknowledged Major General Cobb's jurisdiction over the West Berlin Police Department but refused to give me an appointment with Major General Cobb and also refused to see me personally. He instead over my objections made an appointment for me with Mr. Harris, the Director of Public Safety. I was promised that I would be shown Mr. Harris' report for verification and that same would then be given to Major General Cobb.

69. On July 23, 1971 I met Mr. Harris together with his deputy, Mr. Lanier, at the American Mission in West Berlin. The interview took place in Mr. Lanier's office on whose wall a certificate was hanging stating that Mr. Lanier was an agent of the Federal Bureau of Investigation. It can, therefore, be assumed that Mr. Harris was also an agent of the Federal Bureau of Investigations.

I told Mr. Harris and Mr. Lanier about the criminal medical malpractice on my person, about the fact that Simon Eigen and associates were engaged in racketeering and were members of the New York crime syndicate, about the New York City police corruption investigation, about the criminal world-wide INTERPOL persecution of my person, about the adulteration of food and water, and, of course, about my complaint about the West Berlin Police Department.

Mr. Harris took shorthand notes which I cannot vouch that they represented what I said. After interviewing me for probably fifteen minutes, Mr. Harris with a nod from Mr. Lanier suddenly sarcastically said: "I don't believe anything. If you don't leave immediately, I have you arrested."

70. On July 28, 1971, I phoned Colonel Terry who told me that he would not show me Mr. Harris' report for verification and that he would not show it to Major General Cobb either. He sarcastically said: "Get yourself a better doctor." Mr. Harris and Mr. Lanier did not stop the West Berlin Police Department from persecuting me either, even though they had the power to do so. I doubt very much that they brought this matter to the attention of the West Berlin Police Department. The ^{was} persecution continued unchanged and/some time later severely increased.

71. On July 16, 1974, I personally handed Consul Egan at the American Embassy in London, England, a letter dated July 9, 1974 addressed to the United States Consul General in London in the latter's absence. Consul Egan is and was in charge of the Special Consular Services Unit, one of whose functions it is to provide consular protection to American citizens.

In this letter I explained in detail that I was being persecuted in London in the form of criminal adulteration of water, soft drinks and food in my hotel, food stores and restaurants.

I further explained that this was being arranged by and for the fraternal organizations of London and the London police department on behalf of Ex-Nazi organizations in West Berlin and on behalf of the New York crime syndicate.

I also explained that this was done to me as a witness to a murder and a possible second murder in New York, New York.

I explained further that I was left among other organic damages with severe allergies, kidney damage and liver damage from criminal medical malpractice in New York, New York.

I gave him specific names and addresses and also asked him to bring charges against a certain London police department detective who intimidated me and did not accept and follow through on my request for a search of the basement of the hotel in which I resided, even though I demonstrated to him in my hotel room that just by putting this hotel's running water on my tongue and spitting it out, my tongue became white.

Consul Egan, while claiming that he would submit my complaint to the proper British authorities, did in fact nothing to stop this chemical persecution of my person. If he filed my complaint at all with British authorities, it was filed in bad faith.

He admitted to me personally that if the American Embassy in London would want to get this persecution stopped, they could get it stopped promptly by just making the proper request to British authorities.

72. I am in a position to give detailed and important evidence on the interstate racketeering activities of the Eigens, their crime syndicate associates, the racketeer influenced and corrupt organizations involved with the Eigens as well as with my criminal medical malpractice and persecution, who without question constitute the board of directors of the American crime syndicate, on their protectors and on many individuals who have been involved in the conspiracy against my life, health and civil and constitutional rights.

73. I am also in a position to name a good number of corroborating witnesses. Months before I learned that the Eigens were engaged in racketeering, Simon Eigen's sister-in-law, Mollie Eigen, mentioned to me when I double-parked for a few minutes that the Eigens were paying thousands of dollars per year to the Tenth New York City Police Precinct. I thought, however, that this pertained to protecting their customers and themselves from parking tickets. In view of the Eigen's pathological stinginess, I considered this statement an exaggeration. However, in light of their racketeering activities it was, no doubt, an understatement. The Tenth New York City Police Precinct was at all times fully informed about the plans of the New York Police Headquarters and tipped off the Eigens. I can give further evidence in this respect.

74. In December 1973, a well organized attack was made on my life with adulterated water supplied through its territory by the West Berlin Waterworks. This murder attempt was carried out either at the request of the New York crime syndicate, or was certainly coordinated with the New York crime syndicate.

I had an apartment in West Berlin since November 1, 1972, and had been kept ill through adulteration of water and food most of the time. While the West Berlin Waterworks made this attack, all nonalcoholic beverages (I am not permitted to drink alcohol) and some food and medicine were adulterated with a certain salty chemical throughout West Berlin. Same dried me out and could have caused my death by dehydration within another day or so, if I had not left the City. This was preceded by deliberate pharmaceutical malpractice by West Berlin urologist Dr. med. Norman Zeman (Zeman). Another physician confirmed to me that this action was taken to definitely kill me. It was, no doubt, done with the knowledge and approval of members of the staff of the American Military Government in West Berlin, which still has the supreme authority in West Berlin and control of the Police in West Berlin together with the British and French Military Governments. I can give considerable evidence in this respect.

75. It was coordinated throughout Europe.

76. I survived this murder attempt only because I abstained from taking sufficient food and liquids and managing from time to time to obtain these essentials in normal or less adulterated form and by traveling from country to country. However, it is impossible to subsist in this manner for long.

77. In West Berlin, my apartment was illegally broken and entered several times with duplicate keys and all my food was adulterated then by spraying these chemicals onto it. In one instance, it was done by a former SS-man in black SS pants and short boots. Also, my medicine and bottled water reserves kept in my apartment were adulterated at the same time in this fashion.

78. All this was made possible because the American Military Government in West Berlin did not accord me the protection I am entitled to as an American citizen.

79. While working for Eigen Supply Co., Inc., I saw that there were constant inquiries from Federal and New York City government agencies, including distant United States Army bases, for not only regular plumbing materials but for materials that are normally not handled by regular plumbing supply distributors. From the demeanour of Simon Eigen it was quite clear that these callers knew that they could expect kick-backs, if a purchase was made.

80. Due to my having been criminally kept ill since 1965 almost all the time and having been kept forcibly absent from New York, New York, and the United States of America from January 22, 1966 to January 3, 1968, and from April 13, 1971 to the present, I have been criminally prevented from voting in elections and from serving as a petit juror and possible grand juror. This can be ascertained at the Jury Clerk's office at the New York County Supreme Court.

81. The following registered air mail letters sent by me in connection with this case to the office at 345 Park Avenue, New York, New York, and home at 37 West 12 Street, New York, New York 10011, of Attorney at Law and former United States Attorney General Ramsey Clark were not delivered to the addressee by United States postal service employees, and fraudulent postal return receipts were furnished me:

Registered letter received on March 1, 1974 by 44 Münster 1 Post Office, Germany, No. R 767: Postal return receipt signed by J. Mendez on March 5, 1974 - FDR Post Office Station, New York, New York.

Registered letter received on March 26, 1974 by 609 Rüsselsheim 1 Post Office, Germany, No. R 959: Postal return receipt signed by E. Vetter, on April 1, 1974- Old Chelsea Post Office Station, New York, New York.

Registered letter received on April 8, 1974 by Paris 95 Post Office, France, No. LR 686: Postal return receipt signed by Carl Hines on April 13, 1974- Old Chelsea Post Office Station, New York, New York.

Mr. and Mrs. Ramsey Clark have repeatedly told me by telephone that they have not received any of these three registered air mail letters.

82. Registered air mail letter sent by me in connection with this case to Attorney at Law and former United States Attorney for the Southern District of New York Robert Morgenthau at his former home at 4725 Independence Avenue, Bronx-Riverdale, New York, and received by the Delftseplein Post Office, Rotterdam, Netherlands, on February 26, 1974, No. 00301 (00301), was not delivered to the addressee by United States postal service employees, and a fraudulent postal return receipt signed by an illegible signature on March 1, 1974, and stamped by Riverdale Post Office Station, Bronx, New York, was furnished me.

Mr. Robert Morgenthau has told me by telephone that he has not received this registered air mail letter.

83. The following registered air mail letters sent by me in connection with this case to Attorney at Law William Kunstler care of the law firm Kunstler, Kunstler and Hyman, 370 Lexington Avenue, New York, New York, and care of the Center for Constitutional Rights, 853 Broadway, New York, New York 10003, respectively, were not delivered to the addressee or anyone in his offices by United States postal service employees, and fraudulent postal return receipts were furnished me:

Registered letter received on April 9, 1974 by Post Office at Meaux, France, No. LR 209 (209): The postal return receipt has an illegible signature dated with red United States postal service stamping ink. (The round name stamp of the Post Office is lacking). It can be assumed that it was date-stamped by the Post Office serving 370 Lexington Avenue, New York, New York.

Registered special delivery air mail letter received on May 22, 1974 by Terminal 2 Post Office at Heathrow Airport, London, England, No. 8340: Postal return receipt has forged signature reading "W. Kunstler", dated May 28, 1974 by Cooper Post Office Station, New York, New York 10003.

Mr. William Kunstler has repeatedly told me by telephone that neither he nor the offices in whose care they were addressed have received any of these two registered air mail letters.

84. These registered letters were, no doubt, defrauded on the instructions of the New York crime syndicate and New York City Police Department.

There are a number of other registered air mail letters sent by me to prominent Americans on which I was not as yet able to ascertain whether or not they were received by the addressees.

85. Short'ly before my criminal medical malpractice, when I was already being followed around by members of the New York crime syndicate, a Cadillac automobile had slammed into parked cars at the kerb on the downtown side of Broadway between 160th Street and Fort Washington Avenue, New York, New York, which must have caused fatalities. Russell Starkley, the superintendent of 645 West 160 Street, New York, New York, told me at the time that it happened around either 4 AM or 5 AM, and that he was present when it happened. He had no legitimate business to be there at that time of the night.

86. Shortly after this accident, another automobile had slammed into parked cars at the kerb two blocks further downtown from the location of the first accident.

87. During the period when this Grand Jury investigation into Police corruption was going on, there were constantly a new batch of overturned or burned out automobiles to be seen facing north on Riverside Drive near the entrance to and exit from the George Washington Bridge, New York, New York.

88. During this period there were also many totally damaged or burned out automobiles parked at the kerb of 182nd Street outside the Police Precinct at Wadsworth Avenue and 182nd Street, New York, New York.

89. I had never seen that any publicity was given to these severe accidents which must have caused fatalities.

90. This Affidavit does not contain all violations of Federal statutes committed against me and others, nor of New York State statutes.

Herbert L. Palm
Herbert L. Palm
Gro. Middelstrasse 19a
75 Karlsruhe 41
Germany

Leviathan evasi hævæðinn erum vortið meðan að meðaltíðin
verðið til að hæfjast með ófærtum fyrirvara um ófærtum fyrirvara.

and will be submitted to the Board of Directors before the 15th of October.

Micella A. Dow, Vice Consul of the
United States at London,
on my sole responsibility, duly certified to the
Ministers of State, the
qualifications of
the
1924
London, September 23, 1924.

whereas I have, uniformly, treated Indians in a friendly
manner, and do my best to establish good
feelings with them, and in the course of my
travel, have not, but have, treated them with
respect, and with the same kind of courtesy
as I would treat any other people, and
in this, I have been well received by
the Indians, and have been well received
by the Vice Consul of the United States
and the Consul of America at London, England,
and the Consul of the United States at
London, England, and the Consul of the
United States at London, England, and the
Consul of the United States at London, England,

and *Paraceraspis* and *californicus* will be the best to
select for most abundant species out in.

sofort einen weiteren Konsens. Insoweit sollte Polizei und Zoll
-sovereignschaften zusammenarbeiten und dabei auf die
objektiven und internen Verteilung von Gewalt innerhalb des Landes zu
achten und dabei zumindest zwei Arten von Gewalt zu unterscheiden, die
eine gewisse Verantwortung und eine gewisse Verantwortung nicht haben.

Received no. for which you sent your order over credit holding and you
will collect same on the 20th and to credit out to the firm, as above.

enough stuff to movie now (including this daily news review and a 30-second update of the top news stories) to keep the newsroom busy.

notable, for that is another way the minister can avoid transparency. After all, if the minister can't even name the people he's talking about, how can he possibly expect us to take his words seriously?

Introduction to the study of Geodynamics

VOL. 51, NO. 1

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BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HEREERT L. PALM, : *Aug 6 1975
1:30 P.M.
#42933*

Plaintiff, :
-against- : 75 Civ. 315

UNITED STATES OF AMERICA, et al., :
Defendants. : *#42933*

METZNER, D. J.:

Defendants, the United States of America and various officials and agencies thereof, have moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for an order dismissing the complaint on the ground that it fails to state a claim upon which relief can be granted.

The complaint in this action seeks a writ of mandamus to compel most of the defendants to institute a criminal investigation into various allegations of criminal conduct much of which, according to the complaint, is being directed at plaintiff in an effort to murder him. In addition, the complaint seeks to have the Secretary

MICROFILM

7 1975
AUG 6

of State furnish plaintiff with protection in a consulate while plaintiff remains outside of the United States, and to have the United States provide security for him as a government witness in the United States to enable him to return to this country from Germany where he now resides.

Jurisdiction is based on 28 U.S.C. § 1331 (1970) which provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." (Emphasis added.)

An action brought pursuant to this statute may properly seek to review "ministerial acts which are subject to positive command, plainly described and free from doubt" but not discretionary acts. Fifth Avenue Peace Parade Committee v. Hoover, 327 F. Supp. 238, 242-43 (S.D.N.Y. 1971).

In the instant case the complaint does not indicate how any of the officials or agencies named as defendants might owe plaintiff a duty to perform the actions which he seeks to compel. The main relief sought is to have the court compel criminal prosecutions but it

is clear that:

"In the absence of statutorily defined standards governing reviewability, or regulatory or statutory policies of prosecution, the problems inherent in the task of supervising prosecutorial decisions do not lend themselves to resolution by the judiciary."

Inmates of Attica Correctional Facility v. Rockefeller,

477 F.2d 375, 380 (2d Cir. 1973).

The complaint also seeks to have the court turn plaintiff's allegations over to a grand jury even without the participation of the Attorney General, and to order plaintiff to testify after providing him with adequate security.

While it is true that the court has the authority to bring possible offenses to the attention of the grand jury, O'Dwyer v. Chandler, 352 F.2d 987, 990 (10th Cir. 1965), cert. denied, 384 U.S. 926 (1966), In re April 1956 Term Grand Jury, 239 F.2d 263, 268-69 (7th Cir. 1956), it is also true that the grand jury may consider any charges, even those brought to its attention by a private citizen. See, In re April 1956 Term Grand Jury, supra at 268-69. Under these circumstances, there is no reason for the court to involve itself with the grand jury on plaintiff's behalf.

Finally, plaintiff's request for appointment of counsel must be deemed withdrawn inasmuch as an attorney has represented him in opposing this motion to dismiss.

For the above reasons, the motion to dismiss the complaint is granted.

So ordered.

Dated: New York, N. Y.
August 6, 1975

Charles H. Lieber
U. S. D. J.

Translation

PREFECTURE DE PARIS
SAINTE-ANNE HOSPITAL CENTER

Psychiatric Services
Neurosurgical Center
André Ameline Clinic
 Neurology
 Day Hospital
 Night Hospital

1, rue Cabanis, 75674 Paris, Cedex 14

CERTIFICATE OF STAY

The Director of the hospital certifies that

Mr. PALM, Herbert

residing at 645 West 160 Street, New York, N.Y. 10032

has been hospitalized in this establishment

from 13 June 1967 to 3 January 1968.

Paris, the ~~XXXXXXXXXX~~ 7 September 1976

The Director

(Stamp and signature)

PRÉFECTURE DE PARIS

CENTRE HOSPITALIER SAINTE-ANNE

SERVICES PSYCHIATRIQUES
CENTRE NEUROCHIRURGICAL
CLINIQUE ANDRE AMELINE
NEUROLOGIE
HOPITAUX DE JOUR
HOPITAL DE NUIT

1, rue Cabanis, 75674 Paris Cedex 14

CERTIFICAT DE

~~PRÉSENCE~~
SÉJOUR

Le Directeur de l'Hôpital certifie que

M. Palm Robert

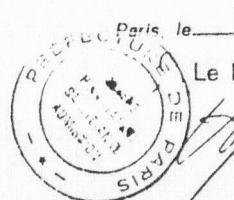
648 West 160 Street

demeurant à New York NY 10032

est hospitalisé dans cet établissement
a été hospitalisé

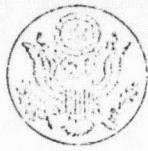
du 13 juillet 67

au 3 Janvier 68



13.7.67

Le Directeur,



DEPARTMENT OF STATE
WASHINGTON

August 11, 1967

Honorable William F. Ryan
House of Representatives
Washington, D. C. 20515

Dear Congressman Ryan:

I last wrote you on July 10 regarding Mr. Herbert Palm who is hospitalized at Paris, France. The Embassy has submitted an additional report on Mr. Palm's condition which is quoted herein for your information to confirm the telephone call to your office on August 9 regarding this case.

"A long consultation on July 25 with Dr. Deniker, Chief of the Section in which Mr. Palm is confined, only confirmed what the Embassy already knew, i.e., that the authorities would be pleased to release him only to his family or to a medical institution in the United States. They consider that he is a danger to himself and possibly others. Palm's refusal to return to the United States is well known to them and to the Embassy and since neither has the power to force him to make such a decision, there seems to be no other alternative but to keep him at Ste Anne's for the present. In any event, his release could not be contemplated until some significant improvement takes place. Dr. Deniker described Palm as a "migratory paranoid" who, in the absence of treatment, could be dangerous.

The consular officer visited Mr. Palm who pressed for his release and again refused to return to the United States, from where he said he had fled to escape the clutches of a gang which was after him. When informed that his release was contingent upon his willingness to return, he seemed to give it some consideration, but soon dismissed it because he feared he might be rehanded into a mental institution if he did acquiesce. However,

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he seems somewhat less adamant than during the previous visit, and perhaps in time he can be persuaded by the doctors that this would be the best course of action. He looked well and made no reference to his liver, his health or the food. He is being well cared for and has sufficient funds (more than \$1,000) in cash and travellers checks on deposit with the police from which he can draw on at will for simple needs. He appears to be the beneficiary of some kind of "pension" or payments from the West German Government.

The Embassy will continue to take an interest in Mr. Palm's case and will promptly report any developments to the Department."

I hope the foregoing information will be helpful to you in replying to your constituent.

Sincerely yours,

William H. Macomber, Jr.
Assistant Secretary for
Congressional Relations

Translation

Faculté de Médecine de Paris-Cochin
(Medical Faculty of Paris-Cochin)

Servide Hospitalo-Universitaire de
(University Hospital Service of)

SANTÉ MENTALE ET DE THÉRAPEUTIQUE
(Mental Health and of Therapy)

du (of) Professeur (Professor)
P. Deniker

100-102 Rue de la Santé, 75674 Paris Cedex 14

Téléphone: 331-99-50 & 707-91-29

=====

Mr. Herbert PALM
Niddastrasse 19a
7500 Karlsruhe 41
Germany

Paris, the 17th October 1976

Sir,

As I already have informed you, the laws and regulations
in force in our country do not permit any disclosure of
medical secrets, also not on express invitation of the patient.
Your attorney could confirm this to you.

I add that the communication of hospital files is forbidden.
In your particular case you have been placed under the régime
of internment officially pronounced by the Préfet (Commissioner)
of Police of Paris, who is responsible for this hospitalization.

I beg you to believe, Sir, in the assurance of my
distinguished consideration.

signed: Dr. Cottreau
Doctor Cottreau
Chief of the Clinic

PARIS, 17 Octobre 1976

SERVICE HOSPITALO-UNIVERSITAIRE DE
SANTÉ MENTALE ET DE THÉRAPEUTIQUE
DU PROFESSEUR P. DENIKER

100-102, RUE DE LA SANTÉ, 75674 PARIS CEDEX 14
TÉLÉPHONE : 331-89-80 4 707-81-29

Recd. 10/21/76

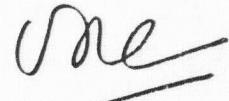
Monsieur Herbert PALM
Niddastrasse 19 a
7500 Karlsruhe 41
ALLEMAGNE

Monsieur,

Comme je vous l'ai déjà fait savoir, les lois et règlements en vigueur dans notre pays ne permettent aucune divulgation du secret médical, même sur l'invitation expresse du patient. Votre avocat pourra vous le confirmer.

J'ajoute que la communication des dossiers hospitalier est interdite. Dans votre cas particulier vous avez été placé sous le régime de l'internement d'office prononcé par le Préfet de Police de Paris qui est responsable de cette hospitalisation.

Je vous prie de croire, Monsieur, à l'assurance de ma considération distinguée.



Docteur COTTEREAU
Chef de Clinique

Social Security Benefit Information

Received 10 Jan 77

From: Bureau of Retirement and Survivors Insurance
Division of International Operations
P.O. Box 1756, Baltimore, Maryland 21203, U.S.A.

Date

12/30/76

Your Claim Number

HERBERT L PALM
KUNSMANN
NIDDASTRASSE 19A
7500 KARLSRUHE 41
GERMANY

752

070-14-7876 HA

EFFECTIVE 05/73 THE BENEFITS PAYABLE ON THIS SOCIAL SECURITY RECORD HAVE BEEN REFIGURED TO CORRECT THE PREVIOUS CALCULATION.

YOUR MONTHLY BENEFIT AMOUNT IS \$ 218.70.

THE CHANGE IN BENEFIT RATES IS DUE TO THE AMENDMENTS TO THE SOCIAL SECURITY ACT.

The date on onset of your disability has been changed to 5/18/65 rather than 8/11/67 as previously established. However, we are not able to change your date of entitlement due to your date of filing.

YOUR NEXT PAYMENT WILL BE FOR \$262.80. IT WILL INCLUDE THE DIFFERENCE BETWEEN THE AMOUNT YOU RECEIVED AT THE OLD RATE AND THE AMOUNT YOU SHOULD HAVE BEEN PAID AT THE NEW RATE. IT WILL COVER BENEFITS DUE YOU THROUGH 11/76. AFTER THAT, YOU WILL RECEIVE YOUR REGULAR MONTHLY PAYMENT OF \$279.10.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR CLAIM, PLEASE GET IN TOUCH WITH ANY SOCIAL SECURITY OFFICE OR WRITE TO US AT THE ABOVE ADDRESS.

Your benefit amount has been refigured and increased as a result of the period of disability established for you.

I

Important: See other side for an explanation of your appeal rights and other information. ►

Department of Health, Education, and Welfare
Social Security Administration

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SSA-L475F (1-74)

CEDAR PARK and BETH EL CEMETERIES

P.O. Box 329, Westwood, N.J. 076

Translation

Dear Friends!

Date of the postal stamp

Cedar Park Cemetery, N.J., the world's most beautiful cemetery which is so well known to all of us and where so many of our loved ones rest, has now made us the present of a beautiful MAUSOLEUM, which can be a solution to many serious problems. As always at the top of new ideas, Cedar Park Cemetery has made this MAUSOLEUM the most beautiful of America.

There are rooms there for coffins which will forever remain visible to the visiting relatives. But there are also small chambers in which urns can be stored and visited. Some can also be equipped with emblems which show the names of those who perished in concentration camps and whose grave is unknown. All this was designed by well known artists and is today a curiosity.

The prices are kept very low and within the means of all. One can acquire chambers already from \$ 175.00 on to \$ 225.00 and the amount can be paid in installments. In this price "eternal care" is included, so that neither annual care nor plantings are necessary.

The MAUSOLEUM is located in the middle of Cedar Park Cemetery and one travels there with a Rockland Coach Bus from the George Washington Bridge. For people with a car the route goes from the Bridge over Highway No. 4 about 7 miles and then right into Forest Avenue about 4 miles.

Further information will be given by the Congregation office or better even by the Cedar Park office, telephone number: 201-262-1100.

Very truly yours,

CONGREGATION EMES WOZADEK
OF WASHINGTON HEIGHTS, INC.,
NEW YORK.

CEDAR PARK and BETH EL CEMETERIES

CEDAR PARK CEMETERY
NEW CEDAR PARK CEMETERY
FIDELITY CEMETERY ASS'N
OF BERGEN COUNTY, N. J.

P. O. BOX 329, WESTWOOD, N. J. 07675
Phone (201) 262-1100

APR 17 1969

Datum des Poststempels.

Liebe Freunde!

Cedar Park Cemetery, N. J., der Welt schönster Friedhof, der uns allen so wohl bekannt ist und wo so viele unserer Lieben ruhen, hat uns jetzt ein schönes Mausoleum geschenkt, welches Vielen eine Lösung ernster Probleme sein kann. Wie immer an der Spitze mit neuen Ideen, hat Cedar Park Cemetery dieses Mausoleum zum schönsten Amerikas gemacht.

Es gibt dort Räume für Särge, welche für immer besuchenden Angehörigen sichtbar bleiben. Aber es gibt auch kleine Kammern, in denen Urnen aufbewahrt und besucht werden können. Solche können auch mit Plaketten versehen werden, welche die Namen der im Konzentrationslager Ungekommenen tragen und deren Grab unbekannt ist. Dies alles wurde von bekannten Künstlern geplant und ist heute eine Sehenswürdigkeit.

Die Preise sind sehr niedrig gehalten und Allen erschwinglich. Man kann Kammern schon von \$175. - an bis \$225. - erwerben und der Betrag kann abbezahlt werden. In diesem Preis ist "Ewige Pflege" inbegriffen, so dass weder jährliche Pflege noch Bepflanzung erforderlich sind.

Das Mausoleum liegt inmitten des Cedar Park Cemetery und man fährt nach dort mit einem Rockland Coach Bus von der George Washington Bridge. Für Leute mit einem Auto geht der Weg von der Brücke aus über den Highway No. 4 ca. 7 Meilen und dann rechts ab in die Forest Ave., ungefähr 4 Meilen.

Weitere Auskunft wird durch Ihr Gemeindebüro oder besser noch durch das Cedar Park Büro gegeben, Telephonnummer: 201 - 262-1100.

Hochachtungsvoll

CONGREGATION EINES NOZER
OF WASHINGTON HEIGHTS, N.Y., NEW YORK

Congregation Eines Noze



EMBASSY OF THE
UNITED STATES OF AMERICA
Consular Affairs Section
Bonn, Germany

Rec'd 9/11/76

September 9, 1976

Mr. Herbert L. Palm
Niddastrasse 19a
7500 Karlsruhe 4J
Germany

Dear Mr. Palm:

In response to your letter of August 23, 1976, we spoke with the Welfare and Protection Office of the Consulate General in Frankfurt am Main. We discussed your problem, but regret that we are unable to be of assistance in your case.

Sincerely yours,

CRS

American Embassy
Consular Affairs Section
Deichmanns Aue
5300 Bonn-Bad Godesberg

Herbert Leo Palm
Bahnpostlagernd
6000 Frankfurt/Main 11
Germany

July 21, 1977

PARCEL

AIR MAIL - INSURED ~~RECEIPT~~ - RETURN RECEIPT REQUESTED

United States Court of Appeals
Second Circuit
Office of the Clerk
United States Courthouse
Foley Square
New York, NY 10007, USA

Re: Docket No. Pro Se 76-6032; Civil Appeal;
Palm v. Veterans Administration and United States of America.

Gentlemen:

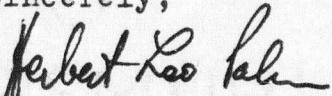
Pursuant to your Scheduling Order dated May 20, 1977 I am enclosing herewith for immediate filing:

- a) My Certificate of Service by Mail of Appellant's Brief with Addendum, Appendix and Exhibits, dated July 21, 1977;
- b) Ten Sets of Appellant's Brief with ~~RECEIPT~~ Addendum, Appendix and Exhibits, dated July 20, 1977, bound in blue manila folders.

Since the U.S. Consulate charges \$ 2.50 for notarizing a document, I did not get the Certificate of Service by Mail notarized, but trust that same is acceptable as issued, since the defendants' attorney is located within your building complex and you can verify the arrival of the papers served with him direct. Should the Court just the same require a notarized Affidavit of Service by Mail, then kindly let me know by air mail, and I shall then promptly furnish you such notarized Affidavit.

Thank you very much.

Sincerely,


Herbert Leo Palm

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

HERBERT LEO PALM, :
Plaintiff-Appellant, :
v. :
THE VETERANS ADMINISTRATION OF THE :
UNITED STATES OF AMERICA and :
THE UNITED STATES OF AMERICA, :
Defendants-Appellees.

CERTIFICATE OF SERVICE
BY MAIL

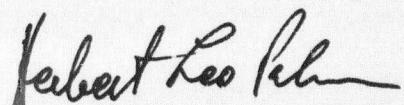
CIVIL APPEAL

Docket No. Pro Se
76-6032

THE APPELLANT, HERBERT LEO PALM, DEPOSES AND SAYS:

1. I am over 18 years of age and my mailing address for service is: Bahnpostlagernd, 6000 Frankfurt/Main 11, Germany.
2. On the 21st of July 1977 I served the within Appellant's Brief with Addendum, Appendix and Exhibits, in this action, in duplicate upon the UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, attorney for the Defendants at United States Courthouse Annex, One St. Andrew's Plaza, New York, N.Y. 10007, U.S.A., the address designated by said attorney for that purpose, by depositing two true copies each of these papers in a postpaid wax-sealed properly addressed insured packet, airmail, return receipt requested, in the main post office at 605 Offenbach am Main 1, official depository under the exclusive care and custody of the government of the Federal Republic of Germany as per the hereto annexed true photocopy of the postal receipt. Because the shipment weighed over one kilogram, this was the only method possible pursuant to German postal regulations when a return receipt is required.

Dated: Frankfurt/Main, July 21, 1977


Herbert Leo Palm
-Plaintiff-Appellant-Pro Se-

BEST COPY AVAILABLE

Der Absender wird gebeten, den stark umrandeten Teil selbst auszufüllen.

Einlieferungsschein
Bitte sorgfältig aufbewahren!

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Wertangabe oder Betrag	DM Pf (in Ziffern)	Noch- nah- me	DM Pf (in Ziffern)
	200	-	25 -
Empfänger	United States Attorney-Southern District New York U. S. Courthouse Annex One St. Andrew's Plaza New York, NY 10007 USA		
Bestimmungs- ort mit postamtl. Leitangaben			

Postvermerk

Einliefe- rungs-Nr.	Gewicht
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